

## 7A Am. Jur. 2d Automobiles V A Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

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## Research References

### West's Key Number Digest


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### A.L.R. Library

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## 7A Am. Jur. 2d Automobiles § 222

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration


#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 1. General Considerations

## § 222. Traffic regulations; offenses regarding vehicles, driving, licensing, and registration, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [4](#), [5\(1\)](#), [5\(3\)](#) to [5\(5\)](#), [6](#), [7](#), [10](#) to [13](#), [14](#), [109](#), [115](#) to [119](#), [159](#), [315](#) to [324](#), [335](#)

The regulation of motor vehicle traffic on highways is a legitimate exercise of the police power of a state.<sup>1</sup> The rules of the road have generally been enacted into law by statutes or local ordinances, the latter being valid if not in conflict with state law.<sup>2</sup> Violations of such statutes or ordinances are usually made criminal offenses, prosecutions for which are in the manner of criminal prosecutions generally. However, in some jurisdictions, the violation of certain traffic regulations or rules merely constitutes an offense denominated as a traffic offense<sup>3</sup> or traffic infraction, which is usually not deemed a crime,<sup>4</sup> although prosecutions therefor may be governed by the rules applicable to prosecutions for lesser crimes, such as misdemeanors.<sup>5</sup> Also, under certain circumstances, a purely technical violation of a traffic regulation may be excused, usually where the violation results from a cause beyond the control of the person charged or from an emergency not of his or her making.<sup>6</sup>

### CUMULATIVE SUPPLEMENT

#### Cases:

Police officers, who were justified in pulling over defendant based on inadequate license plate lamp in violation of the Vehicle and Traffic Law, had probable cause to arrest defendant, where one officer detected odor of marijuana, and other officer observed clear bag containing what appeared to be marijuana on the front passenger seat. [People v. Augustin](#), 61 Misc. 3d 687, 84 N.Y.S.3d 336 (County Ct. 2018).

**[END OF SUPPLEMENT]**

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**Footnotes**

- <sup>1</sup> Cohen v. City of Hartford, 244 Conn. 206, 710 A.2d 746 (1998); D'Ambrosio v. State, 245 Ga. App. 12, 536 S.E.2d 218 (2000); Tapp v. Perciful, 2005 OK 49, 120 P.3d 480 (Okla. 2005).
- <sup>2</sup> Loyal Tire & Auto Center, Inc. v. Town of Woodbury, 445 F.3d 136 (2d Cir. 2006) (interpreting New York law); Board of Com'rs of Rio Arriba County v. Greacen, 2000-NMSC-016, 129 N.M. 177, 3 P.3d 672 (2000); State v. Greene, 97 Wash. App. 473, 983 P.2d 1190 (Div. 1 1999).  
If a municipal ordinance regarding traffic offenses covers specifically what state law covers generally, it does not conflict with state law, but a municipality must provide the same procedural protections as the state when prosecuting traffic offenses covered by both the ordinance and a state law. State v. Kuhlman, 729 N.W.2d 577 (Minn. 2007).
- <sup>3</sup> State v. Daniels, 12 Kan. App. 2d 479, 753 P.2d 300 (1987).
- <sup>4</sup> State v. Rees, 107 Haw. 508, 115 P.3d 687 (Ct. App. 2005); State ex rel. City of New Haven v. Allen Superior Court, 699 N.E.2d 1134 (Ind. 1998); State v. Chittim, 775 A.2d 381 (Me. 2001); State v. Morton, 326 Or. 466, 953 P.2d 374 (1998).
- <sup>5</sup> § 140.
- <sup>6</sup> Schumm v. State, 866 N.E.2d 781 (Ind. Ct. App. 2007), opinion corrected on reh'g, 868 N.E.2d 1202 (Ind. Ct. App. 2007).

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## 7A Am. Jur. 2d Automobiles § 223

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 1. General Considerations

## § 223. Applicability of traffic regulations to private ways or premises

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### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(3\)](#) to [5\(5\)](#), [6](#), [7](#), [10](#) to [13](#), [324](#), [335](#)

### A.L.R. Library

[Applicability, to operation of motor vehicle on private property, of legislation making drunken driving a criminal offense, 52 A.L.R.5th 655](#)

[Applicability of criminal "hit-and-run" statute to accidents occurring on private property, 77 A.L.R.2d 1171](#)

[Liability for injury or damage occasioned by backing of motor vehicle within private premises, 63 A.L.R.2d 184](#)

It is generally recognized that statutory traffic regulations or rules of the road have no application to traffic on private ways or premises.<sup>1</sup> However, this principle has sometimes been qualified to hold that such traffic regulations or rules are applicable to private ways or premises used generally by the public for travel.<sup>2</sup> Indeed, in some jurisdictions, statutory provisions expressly make traffic regulations applicable to private roads open to public traffic,<sup>3</sup> or ways open to the public.<sup>4</sup>

Where a statute establishing a criminal offense in connection with the operation of a motor vehicle makes no reference to the offense occurring on a public roadway, it has often been deemed to apply throughout the state, including on private ways or premises.<sup>5</sup> For example, where a statute makes the act of driving while intoxicated a criminal offense, but does not contain words limiting its application to driving while on public roadways, it has been applied to an act of driving while intoxicated on private property or premises.<sup>6</sup> Similarly, where a statute making it an offense not to stop and render aid after an accident does not specify that a hit-and-run offense must occur on a public roadway, it has been regarded as applicable to accidents occurring on private premises.<sup>7</sup> On the other hand, where a statute establishing an offense in connection with the operation of

a motor vehicle, such as driving while intoxicated,<sup>8</sup> reckless driving,<sup>9</sup> or failure to stop after an accident,<sup>10</sup> is expressly made applicable to the operation of motor vehicles on public highways, such statute is generally held not to apply to the operation of motor vehicles on private ways or premises, although there is some authority to the contrary.<sup>11</sup> It has been held that for purposes of a statute defining a private road or driveway, a residential driveway is not private property that is open to public access, so that criminal liability under a driving under the influence of alcohol (DUI) statute does not extend to intoxicated persons in control of a vehicle parked on a residential driveway, regardless of whether part of the vehicle crosses a sidewalk.<sup>12</sup>

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## Footnotes

- <sup>1</sup> U.S. v. Starks, 301 F. Supp. 2d 76 (D. Mass. 2004) (applying Massachusetts law); State v. Burby, 2003 ME 95, 828 A.2d 796 (Me. 2003); People v. Moore, 196 Misc. 2d 340, 765 N.Y.S.2d 218 (J. Ct. 2003); Com. v. Aircraft Service Intern. Group, 2007 PA Super 7, 917 A.2d 328 (2007) (airport service road not open to public).
- <sup>2</sup> U.S. v. Hill, 473 F.3d 112 (4th Cir. 2007) (applying Virginia law); Henig v. District of Columbia, 213 A.2d 824 (D.C. 1965); State v. Dunn, 147 S.W.3d 75, 193 Ed. Law Rep. 327 (Mo. 2004).
- <sup>3</sup> Com. v. Hart, 26 Mass. App. Ct. 235, 525 N.E.2d 1345 (1988); People v. Tornatore, 125 Misc. 2d 400, 479 N.Y.S.2d 462 (Dist. Ct. 1984).
- <sup>4</sup> State v. Corson, 634 A.2d 1270 (Me. 1993); City of Billings v. Peete, 224 Mont. 158, 729 P.2d 1268 (1986); City of Seattle v. Tolliver, 31 Wash. App. 299, 641 P.2d 719 (Div. 1 1982) (shopping center parking lot).
- <sup>5</sup> State v. Lee, 55 Haw. 505, 523 P.2d 315 (1974); Guidry v. State, 650 N.E.2d 63 (Ind. Ct. App. 1995); Laughlin v. City of Tulsa, 1972 OK CR 3, 492 P.2d 1131 (Okla. Crim. App. 1972).
- <sup>6</sup> People v. Erickson, 108 Ill. App. 2d 142, 246 N.E.2d 457 (2d Dist. 1969); Kansas City v. Troutner, 544 S.W.2d 295 (Mo. Ct. App. 1976); State v. Rosier, 105 N.H. 6, 191 A.2d 526 (1963); State v. Magner, 151 N.J. Super. 451, 376 A.2d 1333 (App. Div. 1977).
- <sup>7</sup> Collins v. State, 346 So. 2d 43 (Ala. Crim. App. 1977); People v. Stansberry, 242 Cal. App. 2d 199, 51 Cal. Rptr. 403 (2d Dist. 1966); Laughlin v. City of Tulsa, 1972 OK CR 3, 492 P.2d 1131 (Okla. Crim. App. 1972).  
A hit-and-run statute applicable on highways and elsewhere throughout the state was applicable to an accident occurring in the parking lot of a private apartment complex where the parking lot was an area of semipublic use. People v. Helm, 27 Ill. App. 3d 675, 327 N.E.2d 544 (4th Dist. 1975).
- <sup>8</sup> State v. Day, 96 Wash. 2d 646, 638 P.2d 546 (1981).  
A privately owned and maintained road in a trailer park, which had not been used for public travel for 20 years, did not constitute a way within the meaning of a statute prohibiting drunk driving on any way. State v. Tardiff, 117 N.H. 53, 369 A.2d 182 (1977).
- <sup>9</sup> State v. Bundy, 79 Ohio L. Abs. 253, 154 N.E.2d 924 (Mun. Ct. 1956) (reckless driving on school grounds); Com. v. Diehl, 35 Pa. D. & C. 503, 1939 WL 2646 (Quar. Sess. 1939) (reckless driving on highway closed to traffic).
- <sup>10</sup> State v. Smith, 66 Ariz. 376, 189 P.2d 205 (1948) (abrogated on other grounds by, State v. Maldonado, 223 Ariz. 309, 223 P.3d 653 (2010)) (potato field); People v. Hoenschle, 132 Cal. App. 387, 22 P.2d 777 (3d Dist. 1933).
- <sup>11</sup> Com. v. Cozzone, 406 Pa. Super. 42, 593 A.2d 860 (1991) (statute proscribing drunk driving on public highways and trafficways held to apply to offense committed in private apartment-complex parking lot which had entrances and exits on main thoroughfares, was unrestricted by barriers, gates, or need for permit, and was not posted with "no parking" or "no trespassing" signs); Reed v. Beckett, 795 S.E.2d 509 (W. Va. 2016) (Commissioner of the West Virginia Division of Motor Vehicles had authority to administratively revoke licenses of all drivers found driving a vehicle anywhere within the physical boundaries of West Virginia while under the influence of alcohol, even if the vehicle was driven only upon private property not open to the general public).  
A driver was properly convicted of drunk driving on a highway where he had been driving while intoxicated on a privately owned driveway, since the driveway-which provided access to three residences, was maintained and plowed by the town, provided secondary access to a convenience store and grade school, and was open to public or general circulation of vehicles-came within the statutory definition of a highway. State v. Paquette, 151 Vt. 631, 563 A.2d 632

(1989).

<sup>12</sup> [State v. McCave, 282 Neb. 500, 805 N.W.2d 290 \(2011\).](#)

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## 7A Am. Jur. 2d Automobiles § 224

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 1. General Considerations

## § 224. “Highway” regulations as applicable to streets

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West’s Key Number Digest

West’s Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(3\)](#) to [5\(5\)](#), [6](#), [7](#), [10](#) to [13](#), [324](#), [335](#)

The question has sometimes arisen as to whether a statutory regulation governing highway traffic is applicable to traffic on a street. In some cases, it has been held, pursuant to the provisions of the particular regulation, that a city street was not within the contemplation of the general term highway used therein. For example, a statute regulating the speed of vehicles approaching highway crossings has been construed not to control the operation of motor vehicles at intersections of city streets.<sup>1</sup> Moreover, a statute making it unlawful to leave any vehicle standing on the main traveled portion of any highway has been interpreted not to contemplate a city street.<sup>2</sup>

In other cases, though, the courts have construed the term highway, as used in a particular statute regulating traffic, to include a street in a town or city.<sup>3</sup> For instance, a statute making it an offense to drive an automobile on a public highway while under the influence of alcohol has been regarded as committed by so driving at the intersection of two streets in a city.<sup>4</sup>

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### Footnotes

<sup>1</sup> [Shannon v. Martin](#), 164 Ga. 872, 139 S.E. 671, 54 A.L.R. 1246 (1927); [Cirosky v. Smathers](#), 128 S.C. 358, 122 S.E. 864 (1924).

<sup>2</sup> [Joseph v. Schwartz](#), 128 Wash. 634, 224 P. 5 (1924).

<sup>3</sup> [Lee Lewis, Inc., v. Dosch](#), 193 Ky. 163, 235 S.W. 355 (1921); [State v. Eidahl](#), 495 N.W.2d 91 (S.D. 1993).

<sup>4</sup> [People v. Kelly](#), 70 Cal. App. 519, 234 P. 110 (2d Dist. 1925); [Parsons v. State](#), 149 Tex. Crim. 395, 194 S.W.2d 560



(1946).

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## 7A Am. Jur. 2d Automobiles § 225

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 1. General Considerations

## § 225. Applicability of traffic regulations to governmental vehicles and employees

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Traffic regulations are generally applicable to all persons or vehicles employed in governmental service,<sup>1</sup> except emergency vehicles on emergency calls<sup>2</sup> and vehicles exempted by law from such regulations,<sup>3</sup> inasmuch as it would be discriminatory to exempt a publicly owned vehicle from laws regulating the use of public highways by motor vehicles, or to permit a publicly owned vehicle to make a use of a highway denied to the public.<sup>4</sup>

State and municipal traffic regulations are valid even insofar as applied to persons or vehicles employed in the service of the federal government,<sup>5</sup> at least where they merely affect such service in an incidental manner. However, insofar as such regulations interfere with or burden federal instrumentalities, or conflict with federal regulations on the same subject, they are invalid.<sup>6</sup>

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### Footnotes

<sup>1</sup> [People ex rel. Hunter v. Department of Sanitation](#), 193 Misc. 233, 86 N.Y.S.2d 437 (Magis. Ct. 1948).

<sup>2</sup> [§ 226](#).

<sup>3</sup> [Hoth v. Clayton County](#), 269 N.W.2d 133 (Iowa 1978) (statute exempting maintenance equipment while actually engaged in highway work).

<sup>4</sup> [People ex rel. Hunter v. Department of Sanitation](#), 193 Misc. 233, 86 N.Y.S.2d 437 (Magis. Ct. 1948).

<sup>5</sup> [Johnson v. State of Maryland](#), 254 U.S. 51, 41 S. Ct. 16, 65 L. Ed. 126 (1920); [City of Norfolk, Va. v. McFarland](#), 145 F. Supp. 258 (E.D. Va. 1956); [Neu v. McCarthy](#), 309 Mass. 17, 33 N.E.2d 570, 133 A.L.R. 1291 (1941) (state rule requiring observance of traffic lights at highway intersections held binding on commander of United States army truck convoy, in the absence of military necessity).

<sup>6</sup> [Johnson v. State of Maryland](#), 254 U.S. 51, 41 S. Ct. 16, 65 L. Ed. 126 (1920).

## 7A Am. Jur. 2d Automobiles § 226

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 1. General Considerations

## § 226. Applicability of traffic regulations to emergency vehicles

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### West's Key Number Digest

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### A.L.R. Library

[Liability for personal injury or property damage from operation of ambulance](#), 84 A.L.R.2d 121

[Liability arising from accidents involving police vehicles](#), 83 A.L.R.2d 383

[Liability for personal injury or damage from operation of fire department vehicle](#), 82 A.L.R.2d 312

### Trial Strategy

[Negligent Operation of Emergency Vehicle](#), 10 Am. Jur. Proof of Facts 3d 203

### Forms

Forms regarding emergency vehicles, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway

Traffic [\[Westlaw® Search Query\]](#)

Statutory provisions in most jurisdictions expressly give emergency vehicles responding to emergency calls the right of way over other vehicular traffic,<sup>1</sup> and generally exempt them from the operation of traffic regulations.<sup>2</sup> For example, statutes or ordinances regulating the speed of motor vehicles frequently exempt from their operation police<sup>3</sup> and fire department<sup>4</sup> vehicles in emergency situations, as well as ambulances responding to emergency calls.<sup>5</sup> Indeed, there is authority to the effect that even without an express exemption, traffic regulations, including those relating to speed, are inapplicable to police or fire department vehicles while on active duty,<sup>6</sup> and that a violation of traffic regulations while such vehicles are on active duty does not give rise to criminal liability if the care that is exercised for the safety of others is reasonable under the circumstances.<sup>7</sup>

The exemption of emergency vehicles from traffic regulations does not ordinarily exist unless their drivers are sounding an audible signal,<sup>8</sup> are responding to an emergency call,<sup>9</sup> and the exigencies of the situation are such as to warrant the operation of those vehicles in violation of such regulations.<sup>10</sup> Moreover, such an exemption only exists in view of, and until existing conditions outweigh, the necessity of accomplishing the duties imposed on the emergency vehicle by law.<sup>11</sup> For instance, a fire department vehicle returning from a fire,<sup>12</sup> or a police vehicle that is merely cruising,<sup>13</sup> are not at such times entitled to special highway privileges or exemptions from traffic regulations as emergency vehicles.

**Reminder:**

The exemption of emergency vehicles from certain traffic regulations does not relieve the driver of the vehicle from the duty to exercise care, commensurate with the circumstances, for the safety of other travelers or persons.<sup>14</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Police officer who drove police vehicle through intersection while traffic light was red, causing collision with car, did not act with reckless disregard for the safety of others, and, thus, was not liable for car occupants' injuries under traffic statute governing authorized emergency vehicles; officer was responding to highest-priority disturbance call, officer slowed to almost complete stop and looked both ways before proceeding into intersection at five miles per hour, and officer immediately activated brakes when he saw car to avoid collision. [N.Y. Vehicle and Traffic Law § 1104](#). [Levere v. City of Syracuse](#), 173 A.D.3d 1702, 103 N.Y.S.3d 212 (4th Dep't 2019).

[END OF SUPPLEMENT]

- 1           § 300.
- 2           City of Baltimore v. Fire Ins. Salvage Corps of Baltimore, 219 Md. 75, 148 A.2d 444, 82 A.L.R.2d 306 (1959); Omek  
v. City of Pittsburgh, 387 Pa. 128, 126 A.2d 425 (1956).
- 3           Dukes v. Hinton, 136 Ga. App. 227, 220 S.E.2d 713 (1975); Baselski v. City of Chicago, 9 Ill. App. 3d 516, 292  
N.E.2d 475 (1st Dist. 1972); State v. Bachmeier, 2007 ND 42, 729 N.W.2d 141 (N.D. 2007); Roberts v. Kettelle, 116  
R.I. 283, 356 A.2d 207 (1976).
- 4           McCarthy v. Mason, 132 Me. 347, 171 A. 256 (1934); City of Baltimore v. Fire Ins. Salvage Corps of Baltimore, 219  
Md. 75, 148 A.2d 444, 82 A.L.R.2d 306 (1959); Vandell v. Sanders, 85 N.H. 143, 155 A. 193, 80 A.L.R. 550 (1931)  
(extending exemption to firefighter riding to fire in his own car).
- 5           Seaberg v. U.S., 448 F.2d 391 (9th Cir. 1971) (applying Washington law); Walden v. Hart, 243 Ark. 650, 420 S.W.2d  
868 (1967); Howe v. Jackson, 18 Utah 2d 269, 421 P.2d 159 (1966).
- 6           Balthasar v. Pacific Elec. Ry. Co., 187 Cal. 302, 202 P. 37, 19 A.L.R. 452 (1921); McCarthy v. Mason, 132 Me. 347,  
171 A. 256 (1934); Goeres v. Goeres, 124 Neb. 720, 248 N.W. 75 (1933); State v. Gorham, 110 Wash. 330, 188 P.  
457, 9 A.L.R. 365 (1920).
- 7           State v. Swift, 101 N.H. 340, 143 A.2d 114 (1958).
- 8           Dukes v. Hinton, 136 Ga. App. 227, 220 S.E.2d 713 (1975); City of Baltimore v. Fire Ins. Salvage Corps of Baltimore,  
219 Md. 75, 148 A.2d 444, 82 A.L.R.2d 306 (1959); City of Kalamazoo v. Priest, 331 Mich. 43, 49 N.W.2d 52 (1951);  
Abood v. Hospital Ambulance Service, Inc., 30 N.Y.2d 295, 332 N.Y.S.2d 877, 283 N.E.2d 754 (1972).
- 9           Lucas v. City of Los Angeles, 10 Cal. 2d 476, 75 P.2d 599 (1938) (disapproved of on other grounds by, Torres v. City  
of Los Angeles, 58 Cal. 2d 35, 22 Cal. Rptr. 866, 372 P.2d 906 (1962)); Pieper v. Harmeyer, 235 N.W.2d 122 (Iowa  
1975).
- 10          Cavey, to Use of Butz v. City of Bethlehem, 331 Pa. 556, 1 A.2d 653 (1938).
- 11          City of Norfolk, Va. v. McFarland, 145 F. Supp. 258 (E.D. Va. 1956).
- 12          Lucas v. City of Los Angeles, 10 Cal. 2d 476, 75 P.2d 599 (1938) (disapproved of on other grounds by, Torres v. City  
of Los Angeles, 58 Cal. 2d 35, 22 Cal. Rptr. 866, 372 P.2d 906 (1962)); Audette v. New England Transp. Co., 71 R.I.  
420, 46 A.2d 570 (1946).
- 13          Lucas v. City of Los Angeles, 10 Cal. 2d 476, 75 P.2d 599 (1938) (disapproved of on other grounds by, Torres v. City  
of Los Angeles, 58 Cal. 2d 35, 22 Cal. Rptr. 866, 372 P.2d 906 (1962)).
- 14          §§ 912, 913.

## 7A Am. Jur. 2d Automobiles § 227

American Jurisprudence, Second Edition | May 2021 Update

### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 1. General Considerations

## § 227. Regulations relating to motorcycles and bicycles

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(3\)](#) to [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [324](#), [327](#), [335](#)

### Trial Strategy

[Negligence of Motorist in Accident Involving Bicyclist](#), 11 Am. Jur. Proof of Facts 3d 395

[Negligent Operation of Motorcycle](#), 47 Am. Jur. Proof of Facts 2d 127

Regulations sometimes prohibit riding on a motorcycle except on the permanent and regular seats attached to the vehicle, and make it unlawful for any person operating such a vehicle to carry another person on it in front of the operator; such a provision constitutes a valid exercise of the police power with respect to the safety of travelers on the public highways and persons carried on motorcycles.<sup>1</sup> Likewise, it is within the legislative power to prohibit the operator of a bicycle from carrying another person thereon except in a seat securely fastened to the rear of the operator.<sup>2</sup>

Insofar as a bicycle is a vehicle that may properly be used on highways and streets,<sup>3</sup> a bicyclist is generally subject to the same traffic regulations as are applied to operators of other vehicles,<sup>4</sup> such as one requiring the signaling of a turn<sup>5</sup> or keeping to the right-hand side of a roadway.<sup>6</sup> It may be provided by statute or ordinance that if a usable path for bicycles has been provided adjacent to a roadway, bicycle riders must use the path and not the roadway.<sup>7</sup>

Ordinances prohibiting the riding of bicycles on sidewalks have been considered reasonable and valid.<sup>8</sup> A statute making it unlawful to drive any vehicle on or along any sidewalk, except in crossing the sidewalk to or from abutting property, has been construed to prohibit a person from riding a bicycle on a sidewalk.<sup>9</sup>

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Footnotes

- <sup>1</sup> [In re Wickstrum](#), 92 Neb. 523, 138 N.W. 733 (1912).
- <sup>2</sup> [McNamara v. Cohen](#), 184 Misc. 872, 55 N.Y.S.2d 600 (Sup 1944).
- <sup>3</sup> [§ 12](#).
- <sup>4</sup> [People v. Fong](#), 17 Cal. App. 4th Supp. 1, 21 Cal. Rptr. 2d 907 (App. Dep't Super. Ct. 1993); [Syrle v. Springer](#), 239 Ill. App. 3d 148, 179 Ill. Dec. 910, 606 N.E.2d 742 (4th Dist. 1992); [Borromeo v. Shea](#), 138 Wash. App. 290, 156 P.3d 946 (Div. 1 2007).
- <sup>5</sup> [Blitstein v. Capital District Transportation Authority](#), 81 A.D.2d 981, 439 N.Y.S.2d 768 (3d Dep't 1981).
- <sup>6</sup> [Hansen v. Eyre](#), 2005 UT 29, 116 P.3d 290 (Utah 2005).
- <sup>7</sup> [Toma v. State](#), 126 S.W.3d 528 (Tex. App. Houston 1st Dist. 2003), petition for discretionary review refused, (Sept. 3, 2003).
- <sup>8</sup> [McCrimmon v. State](#), 505 So. 2d 13 (Fla. 5th DCA 1987).
- <sup>9</sup> [Arbuckle v. Wasatch Land & Imp. Co.](#), 120 Utah 338, 234 P.2d 607 (1951).

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## 7A Am. Jur. 2d Automobiles § 228

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 1. General Considerations

## § 228. Regulations relating to motorcycles and bicycles—Wearing of protective equipment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(2\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [324](#), [327](#), [335](#)

### A.L.R. Library

[Admissibility and Use of Evidence of Nonuse of Bicycle Helmets](#), 2 A.L.R.6th 429

[Validity of traffic regulations requiring motorcyclists to wear helmets or other protective headgear](#), 72 A.L.R.5th 607

### Trial Strategy

[Negligent Operation of Motorcycle](#), 47 Am. Jur. Proof of Facts 2d 127

### Forms

Forms regarding motorcyclists and bicyclists, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic [\[Westlaw® Search Query\]](#)

Regulations requiring the wearing of helmets by motorcyclists have often been regarded as valid exercises of a state's police power.<sup>1</sup> The constitutionality of such a regulation has been upheld notwithstanding the argument that the state may not validly make it a criminal offense for a person to fail to do an act the only result of which would be to reduce possible injury to him- or herself.<sup>2</sup> In justification of such regulations, the theory has been expressed that a reduction in death and injury to motorcyclists will result in a corresponding decrease in the cost of motor vehicle liability insurance premiums to all persons throughout the state, as well as reduce the number of injured persons who might become wards of the state.<sup>3</sup>

Motorcycle helmet regulations have been held not to violate of the Equal Protection Clause of the U.S. Constitution.<sup>4</sup> The validity of such regulations has been upheld notwithstanding the argument that they are unconstitutionally vague and indefinite,<sup>5</sup> despite the contention that they impose an unreasonable burden on interstate commerce,<sup>6</sup> and despite the assertion that they amount to an unconstitutional invasion of the right to privacy.<sup>7</sup>

Regulations requiring motorcycle operators and passengers to wear protective glasses or goggles have been upheld, notwithstanding that they did not require the same of automobile operators.<sup>8</sup>

**Observation:**

A federal statute authorizes grants to a state if the state has in effect in a given fiscal year a law that makes unlawful throughout the state the operation of a motorcycle if any individual on the motorcycle is not wearing a motorcycle helmet.<sup>9</sup>

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**Footnotes**

- <sup>1</sup> Kingery v. Chapple, 504 P.2d 831 (Alaska 1972); State v. Cotton, 55 Haw. 138, 516 P.2d 709 (1973); State v. Quinnam, 367 A.2d 1032 (Me. 1977); State v. Merski, 113 N.H. 323, 307 A.2d 825 (1973); Com. v. Kautz, 341 Pa. Super. 374, 491 A.2d 864 (1985).
- <sup>2</sup> State v. Eitel, 227 So. 2d 489 (Fla. 1969); State v. Quinnam, 367 A.2d 1032 (Me. 1977); State v. Acker, 26 Utah 2d 104, 485 P.2d 1038 (1971).
- <sup>3</sup> People v. Bennett, 89 Misc. 2d 382, 391 N.Y.S.2d 506 (J. Ct. 1977); State v. Stouffer, 28 Ohio App. 2d 229, 57 Ohio Op. 2d 342, 276 N.E.2d 651 (10th Dist. Franklin County 1971).
- <sup>4</sup> State v. Edwards, 287 Minn. 83, 177 N.W.2d 40 (1970); City of Jackson v. Lee, 252 So. 2d 897 (Miss. 1971); State v. Cushman, 451 S.W.2d 17 (Mo. 1970); State v. Acker, 26 Utah 2d 104, 485 P.2d 1038 (1971).
- <sup>5</sup> ABATE of Georgia, Inc. v. Georgia, 264 F.3d 1315 (11th Cir. 2001) (applying Georgia law); Ferro v. Lewis, 348 Md. 593, 705 A.2d 311, 72 A.L.R.5th 801 (1998); City of Albuquerque v. Jones, 1975-NMSC-025, 87 N.M. 486, 535 P.2d 1337 (1975); City of Bremerton v. Spears, 134 Wash. 2d 141, 949 P.2d 347 (1998).
- <sup>6</sup> Love v. Bell, 171 Colo. 27, 465 P.2d 118 (1970) (also rejecting contention that regulation represented unconstitutional burden on freedom of movement and right to travel); People v. Carmichael, 56 Misc. 2d 388, 288 N.Y.S.2d 931 (County Ct. 1968).

- <sup>7</sup> Com. v. Cowan, 4 Mass. App. Ct. 796, 344 N.E.2d 419 (1976); Arutanoff v. Metropolitan Government of Nashville and Davidson County, 223 Tenn. 535, 448 S.W.2d 408 (1969).
- <sup>8</sup> State v. Cotton, 55 Haw. 148, 516 P.2d 715 (1973); People v. Henninger, 28 Ill. App. 3d 557, 328 N.E.2d 580 (4th Dist. 1975).
- <sup>9</sup> 23 U.S.C.A. § 153(a)(1).

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## 7A Am. Jur. 2d Automobiles § 229

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 1. General Considerations

## § 229. Regulations relating to backing

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [324](#), [335](#)

### Forms

Forms regarding backing, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic  
[\[Westlaw® Search Query\]](#)

Statutes or ordinances often require a motorist to see that the way is clear before backing his or her vehicle, so as to exercise vigilance not to injure anyone,<sup>1</sup> and to refrain from backing until he or she ascertains that it is safe to do so.<sup>2</sup> Such regulations sometimes require a motorist to give a signal or sound a warning before backing.<sup>3</sup>

### Observation:

Statutes requiring that motorists keep to the right half of a roadway<sup>4</sup> have been construed not to apply to motorists while backing.<sup>5</sup>

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Footnotes

- <sup>1</sup> [Buckeye Stages v. Bowers](#), 129 Ohio St. 412, 2 Ohio Op. 401, 195 N.E. 859 (1935); [Callahan v. Disorda](#), 111 Vt. 331, 16 A.2d 179 (1940).  
The general rule is that one backing a motor vehicle on a roadway must exercise reasonable care, the circumstances being the guide as to what constitutes reasonable care. [Nelson v. State](#), 922 So. 2d 447 (Fla. 2d DCA 2006).
- <sup>2</sup> [Armenta v. Churchill](#), 42 Cal. 2d 448, 267 P.2d 303 (1954).  
Regarding regulations as to the backing of motor vehicles from parking spaces, see [§ 311](#).
- <sup>3</sup> [Armenta v. Churchill](#), 42 Cal. 2d 448, 267 P.2d 303 (1954).
- <sup>4</sup> [§ 247](#).
- <sup>5</sup> [Naisbitt v. Eggett](#), 5 Utah 2d 5, 295 P.2d 832 (1956).

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## 7A Am. Jur. 2d Automobiles § 230

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 1. General Considerations

## § 230. Seat belt use laws

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(2\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [324](#), [327](#), [335](#)

### A.L.R. Library

[Nonuse of seatbelt as reducing amount of damages recoverable](#), 62 A.L.R.5th 537

### Trial Strategy

[Proof of Seatbelt Defense](#), 65 Am. Jur. Proof of Facts 3d 1

[Crashworthiness of Motor Vehicle-Defective Automobile Seatbelts](#), 4 Am. Jur. Proof of Facts 3d 131

[The Seatbelt Defense](#), 35 Am. Jur. Trials 349

There is a rational relationship between a mandatory seat belt use law and the state's interest in protecting motorists and saving lives; thus, such a law does not exceed the state's police power,<sup>1</sup> nor does it violate a motorist's freedom of travel<sup>2</sup> or violate equal protection because it applies to passenger cars but not to recreational vehicles<sup>3</sup> or trucks.<sup>4</sup> A motorist's Fourth Amendment right to be free from unreasonable seizures is not violated when he or she is properly arrested by a police officer for violating such a regulation by failing to wear a seat belt,<sup>5</sup> and where a police officer reasonably—whether erroneously or

not—believes that a defendant’s seat belt is unbuckled, the officer has reasonable cause to conduct a traffic stop.<sup>6</sup> In some jurisdictions, a motorist’s violation of a seat belt use law will justify a revocation of his or her driver’s license,<sup>7</sup> and in some the violation of a seat belt use law will qualify as a predicate offense for a statute that prohibits knowingly violating a law, or failing to perform a duty imposed by law, intended to protect the public health and safety and recklessly causing serious bodily injury.<sup>8</sup>

Some statutes require that both the driver and front-seat passenger wear fastened seat belts,<sup>9</sup> and that where the vehicle is equipped with both lap and shoulder belts, the driver and passenger must wear both belts.<sup>10</sup> Under other regulations, though, the driver or front-seat passenger is not obligated to use a shoulder belt where a lap belt is fastened.<sup>11</sup>

**Practice Tip:**

Under the mandatory seat belt use laws of some states, the use or nonuse of seat belts may not be submitted into evidence in any civil action, such as one arising out of a traffic accident.<sup>12</sup>

**Observation:**

A federal statute authorizes grants to a state if the state has in effect in a given fiscal year a law which makes unlawful throughout the state the operation of a passenger vehicle whenever an individual in a front seat of the vehicle (other than a child who is secured in a child restraint system) does not have a safety belt properly fastened about the individual’s body.<sup>13</sup>

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Footnotes

- <sup>1</sup> [People v. Kohrig](#), 113 Ill. 2d 384, 101 Ill. Dec. 650, 498 N.E.2d 1158 (1986); [State v. Hartog](#), 440 N.W.2d 852 (Iowa 1989); [State v. Folda](#), 267 Mont. 523, 885 P.2d 426 (1994); [State v. Fazekas](#), 238 N.J. Super. 403, 569 A.2d 913 (Law Div. 1989).
- <sup>2</sup> [Ramey v. State](#), 2002 WL 1163431 (Tex. App. Houston 14th Dist. 2002), petition for discretionary review refused, (Apr. 9, 2003).
- <sup>3</sup> [City of Tulsa v. Martin](#), 1989 OK CR 24, 775 P.2d 824 (Okla. Crim. App. 1989).
- <sup>4</sup> [Farley v. State](#), 272 Ga. 432, 531 S.E.2d 100 (2000) (noting, however, that minor occupants of pickup trucks may be required to wear seat belts); [Kelter v. State](#), 808 N.E.2d 154 (Ind. Ct. App. 2004).
- <sup>5</sup> [Atwater v. City of Lago Vista](#), 532 U.S. 318, 121 S. Ct. 1536, 149 L. Ed. 2d 549 (2001).
- <sup>6</sup> [U.S. v. Williams](#), 773 F.3d 98 (D.C. Cir. 2014), cert. denied, 135 S. Ct. 2336, 191 L. Ed. 2d 997 (2015).
- <sup>7</sup> [King v. Martinez](#), 2002 WL 1059746 (N.Y. Sup 2002).
- <sup>8</sup> [State v. Lenihan](#), 219 N.J. 251, 98 A.3d 533 (2014).

<sup>9</sup> Bishop v. Takata Corp., 2000 OK 71, 12 P.3d 459 (Okla. 2000).

<sup>10</sup> Carlson v. Ferris, 85 P.3d 504 (Colo. 2003); State v. Ribbel, 111 Haw. 426, 142 P.3d 290 (2006).

<sup>11</sup> People v. Widrick, 185 Misc. 2d 765, 713 N.Y.S.2d 847 (N.Y. City Ct. 2000).

<sup>12</sup> Comer v. Preferred Risk Mut. Ins. Co., 1999 OK 86, 991 P.2d 1006 (Okla. 1999).

<sup>13</sup> 23 U.S.C.A. § 153(a)(2).

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## 7A Am. Jur. 2d Automobiles § 231

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 1. General Considerations

## § 231. Who is “pedestrian” within meaning of traffic regulations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West’s Key Number Digest

West’s Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(3\)](#) to [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [324](#), [335](#)

### A.L.R. Library

[Who is “pedestrian” entitled to rights and subject to duties provided by traffic regulations or judicially stated](#), 35 A.L.R.4th 1117

### Trial Strategy

[Child-Pedestrian Accident Cases](#), 9 Am. Jur. Trials 427

### Forms

Forms regarding pedestrians and nonmotorists, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic [\[Westlaw® Search Query\]](#)

The determination of who is a pedestrian, with respect to rights given and duties imposed by traffic regulations, depends on the particular circumstances and the language of the regulation involved. Where the regulation expressly defines a pedestrian as any person afoot, there appears to be little question that any person afoot on the roadway, regardless of his or her purpose in being there, is a pedestrian within the comprehension of the regulation.<sup>1</sup> Persons on roadways pushing or pulling carts, motorcycles, bicycles, lawnmowers, baby carriages, or other contrivances on wheels,<sup>2</sup> and children there on roller skates, coasters, or the like,<sup>3</sup> have been regarded as such pedestrians.

Under some traffic regulations, a motorist whose vehicle is disabled on a highway, or who is leaving it to ascertain the cause of an obstruction, or is directing traffic at the scene of an accident, is not regarded as a pedestrian,<sup>4</sup> although under other regulations, such a person is regarded as a pedestrian.<sup>5</sup> Moreover, except under extraordinary circumstances or under statutory language requiring such an interpretation, a worker performing his or her necessary duties on a highway is not a pedestrian.<sup>6</sup> Likewise, a person in charge of livestock on a roadway is not a pedestrian within the meaning of traffic regulations.<sup>7</sup>

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#### Footnotes

- <sup>1</sup> [Minato v. Ferrare](#), 295 Or. 22, 663 P.2d 1240, 35 A.L.R.4th 1110 (1983) (worker standing in middle of road as part of private survey crew); [Bergstrom v. Ove](#), 39 Wash. 2d 78, 234 P.2d 548 (1951).  
As to who is a pedestrian within the meaning of traffic regulations governing the right of way as between pedestrians and motorists, see §§ 301 to 304.  
As to who is a pedestrian within the meaning of traffic regulations governing the conduct of pedestrians in walking along highways, see § 324.
- <sup>2</sup> [Jermame v. Forfar](#), 108 Cal. App. 2d 849, 240 P.2d 351, 30 A.L.R.2d 860 (1st Dist. 1952); [Braswell v. Burrus](#), 13 Md. App. 513, 284 A.2d 41 (1971); [Tedla v. Ellman](#), 280 N.Y. 124, 19 N.E.2d 987 (1939).
- <sup>3</sup> [Jermame v. Forfar](#), 108 Cal. App. 2d 849, 240 P.2d 351, 30 A.L.R.2d 860 (1st Dist. 1952); [Dunlop v. Public Service Coordinated Transport](#), 122 N.J.L. 226, 4 A.2d 683 (N.J. Sup. Ct. 1939).  
A sled is a vehicle, and a child upon a sled on the street is not a pedestrian. [Moon v. Weeks](#), 25 Md. App. 322, 333 A.2d 635 (1975).
- <sup>4</sup> [Bird v. Gabris](#), 53 Mich. App. 164, 218 N.W.2d 871 (1974); [Fulton v. Chouteau County Farmers' Co.](#), 98 Mont. 48, 37 P.2d 1025 (1934); [Carlsen v. Hardware Mut. Cas. Co.](#), 255 Wis. 407, 39 N.W.2d 442 (1949).  
A motorist who was struck after the first accident was not a pedestrian and, thus a statute that required pedestrians crossing a roadway to yield the right of way was not applicable to him, where the motorist was standing in the middle of the road following the first collision. [Bradley v. Maurer](#), 17 Wash. App. 24, 560 P.2d 719 (Div. 3 1977).
- <sup>5</sup> [Discargar v. City of Seattle](#), 25 Wash. 2d 306, 171 P.2d 205 (1946).
- <sup>6</sup> [Beyrent v. Kaplan](#), 315 Pa. 353, 172 A. 651, 92 A.L.R. 1515 (1934); [Reid v. Owens](#), 98 Utah 50, 93 P.2d 680, 126 A.L.R. 55 (1939).
- <sup>7</sup> [Lawson v. Fordyce](#), 237 Iowa 28, 21 N.W.2d 69 (1945).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 2. Exclusion or Restriction of Certain Traffic

## § 232. Exclusion or restriction of certain traffic, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [13](#), [14](#), [324](#), [335](#)

A state may, acting under its police power, restrict or altogether exclude certain motor vehicles from particular highways or streets, when, in its judgment, such is required in the interest of the safety of travelers thereon,<sup>1</sup> although a regulation doing so may be declared unconstitutional where it has no substantial relation to the protection of public safety or is plainly an invasion of rights secured by fundamental law.<sup>2</sup>

A governmental authority may establish zones for the safety and convenience of pedestrians entering and leaving public conveyances, and exclude vehicular traffic therefrom.<sup>3</sup>

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### Footnotes

<sup>1</sup> State v. Mayo, 106 Me. 62, 75 A. 295 (1909); Commonwealth v. Kingsbury, 199 Mass. 542, 85 N.E. 848 (1908).

<sup>2</sup> State v. Mayo, 106 Me. 62, 75 A. 295 (1909).

<sup>3</sup> District of Columbia v. Manning, 18 F.2d 806, 53 A.L.R. 167 (App. D.C. 1927); City of Jacksonville v. Bell, 93 Fla. 936, 112 So. 885, 53 A.L.R. 163 (1927); City of Cleveland v. Gustafson, 124 Ohio St. 607, 11 Ohio L. Abs. 416, 180 N.E. 59, 79 A.L.R. 1325 (1932).



## 7A Am. Jur. 2d Automobiles § 233

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 2. Exclusion or Restriction of Certain Traffic

## § 233. Local traffic regulations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [324](#), [335](#)

A municipality, acting under properly delegated legislative authority, may enact ordinances restricting or altogether excluding certain motor vehicles from particular roadways,<sup>1</sup> such as by limiting the use of a way to pedestrians and bicyclists.<sup>2</sup> The delegation of power to a municipality to regulate traffic on its streets implies the power to prohibit the use of some streets by certain vehicles, provided such prohibition is reasonable under the circumstances.<sup>3</sup> Nevertheless, where a prohibition of the use of certain streets in a city interferes with the use of a state highway passing through the city, such prohibition goes beyond the powers of the local government.<sup>4</sup>

Where a municipal ordinance restricting or excluding certain motor vehicles from particular streets applies equally to all members of a class similarly situated, it is not open to the objection that it violates equal protection of the laws or is unfairly discriminatory.<sup>5</sup> However, an ordinance prohibiting through or transient traffic in a designated area in or near a municipality, which has for its purpose the reservation of the streets in that area for the benefit of the residents thereof, has been declared invalid as discriminatory and unreasonable.<sup>6</sup>

Park boards and commissions are sometimes empowered to restrict the vehicular use of parks and parkways under their jurisdiction.<sup>7</sup> A park commission empowered to restrict the use of its parkways may entirely prohibit driving thereon by persons with only learners' permits.<sup>8</sup>

Municipal police authorities often have the power to temporarily close a street or any part thereof during a fire or at the time of an accident or emergency.<sup>9</sup>

Footnotes

- <sup>1</sup> [Commonwealth v. Kingsbury](#), 199 Mass. 542, 85 N.E. 848 (1908); [Michigan Towing Ass'n v. City of Detroit](#), 370 Mich. 440, 122 N.W.2d 709 (1963) (prohibition against towing motor vehicles on expressway during rush hours).
- <sup>2</sup> [Christensen v. City of Pocatello](#), 142 Idaho 132, 124 P.3d 1008 (2005).
- <sup>3</sup> [Livingston Tp. v. Marchev](#), 85 N.J. Super. 428, 205 A.2d 65 (App. Div. 1964) (upholding ordinance prohibiting parking of trailers within township limits); [City of Niles v. Dean](#), 25 Ohio St. 2d 284, 54 Ohio Op. 2d 392, 268 N.E.2d 275 (1971) (upholding restriction of truck traffic); [Blumenthal v. City of Cheyenne](#), 64 Wyo. 75, 186 P.2d 556 (1947).
- <sup>4</sup> [City of Arlington v. Lillard](#), 116 Tex. 446, 294 S.W. 829 (1927).  
A city's prohibition of trucks on a city street violated a provision of the Illinois Vehicle Code allowing trucks access from a Class I or Class II highway onto any locally designated highway, where the city admitted that the street was a locally designated highway. [Crest Hill Land Development, LLC v. City of Joliet](#), 396 F.3d 801 (7th Cir. 2005).
- <sup>5</sup> [Bradley v. Public Utilities Commission of Ohio](#), 289 U.S. 92, 53 S. Ct. 577, 77 L. Ed. 1053, 85 A.L.R. 1131 (1933); [Wilbur v. City of Newton](#), 301 Mass. 97, 16 N.E.2d 86, 121 A.L.R. 570 (1938); [City of Columbia v. Alexander](#), 125 S.C. 530, 119 S.E. 241, 32 A.L.R. 746 (1923).
- <sup>6</sup> [People v. Grant](#), 306 N.Y. 258, 117 N.E.2d 542 (1954).
- <sup>7</sup> [Barnes v. Essex County Park Commission](#), 86 N.J.L. 141, 91 A. 1019 (N.J. Ct. Err. & App. 1914); [People v. Alexander](#), 7 N.Y.2d 39, 194 N.Y.S.2d 495, 163 N.E.2d 323 (1959).
- <sup>8</sup> [People v. Alexander](#), 7 N.Y.2d 39, 194 N.Y.S.2d 495, 163 N.E.2d 323 (1959).
- <sup>9</sup> [People v. Uncapher](#), 207 Misc. 960, 141 N.Y.S.2d 377 (County Ct. 1955).

## 7A Am. Jur. 2d Automobiles § 234

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 2. Exclusion or Restriction of Certain Traffic

## § 234. Local traffic regulations—Anticruising ordinances

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

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### A.L.R. Library

[Validity, construction, and effect of statutes or ordinances forbidding automotive “cruising”—practice of driving repeatedly through loop of public roads through city, 87 A.L.R.4th 1110](#)

A number of communities have enacted ordinances to curb the practice of cruising, generally defined in terms of driving a motor vehicle past a designated traffic control point a specified number of times within a specified time period.<sup>1</sup> Such anticruising ordinances have been regarded as valid exercises of a municipality's police power where they reduce traffic congestion, noise, and air pollution, and ensure access for emergency vehicles.<sup>2</sup> Ordinances of this type have sometimes been upheld notwithstanding the argument that they were unconstitutionally overbroad,<sup>3</sup> although a contrary holding has been reached.<sup>4</sup> Such ordinances have also been upheld in the face of contentions that they violate the constitutional right to freedom of travel<sup>5</sup> and that they represent an unconstitutional invasion of the right to privacy.<sup>6</sup>

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### Footnotes

<sup>1</sup> [Lutz v. City of York, Pa.](#), 899 F.2d 255, 87 A.L.R.4th 1081 (3d Cir. 1990) (more than twice within any two-hour period between 7:00 p.m. and 3:30 a.m.); [State v. Stallman](#), 519 N.W.2d 903 (Minn. Ct. App. 1994) (three times

within specified time period); *Scheunemann v. City of West Bend*, 179 Wis. 2d 469, 507 N.W.2d 163 (Ct. App. 1993).

<sup>2</sup> *Brandmiller v. Arreola*, 189 Wis. 2d 215, 525 N.W.2d 353 (Ct. App. 1994), decision aff'd, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).

<sup>3</sup> *Brandmiller v. Arreola*, 189 Wis. 2d 215, 525 N.W.2d 353 (Ct. App. 1994), decision aff'd, 199 Wis. 2d 528, 544 N.W.2d 894 (1996) (ordinance setting forth limited hours and locations and defining cruising as passing specified traffic control point three times within an hour).

<sup>4</sup> *State v. Stallman*, 519 N.W.2d 903 (Minn. Ct. App. 1994) (ordinance held overbroad and vague where, inter alia, it deterred and punished innocent conduct that happened to take drivers past cruising checkpoints and made no exception for drivers who could explain their noncruising presence).

<sup>5</sup> *Lutz v. City of York, Pa.*, 899 F.2d 255, 87 A.L.R.4th 1081 (3d Cir. 1990); *Brandmiller v. Arreola*, 189 Wis. 2d 215, 525 N.W.2d 353 (Ct. App. 1994), decision aff'd, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).

<sup>6</sup> *Brandmiller v. Arreola*, 189 Wis. 2d 215, 525 N.W.2d 353 (Ct. App. 1994), decision aff'd, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 2. Exclusion or Restriction of Certain Traffic

## § 235. Local traffic regulations—Exclusion or restriction of business or commercial vehicles

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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Pursuant to properly delegated legislative authority, a municipality may exclude or restrict the use on certain streets of business or commercial vehicles,<sup>1</sup> provided its regulations in this respect are directly related to the public safety or welfare and are not arbitrary or unreasonably discriminatory.<sup>2</sup> Such regulations may be held to be unconstitutional encroachments on the exercise of private property rights where they are unsupported by any legitimate government interests, and where they impose significant burdens on the owners of the regulated vehicles.<sup>3</sup>

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### Footnotes

<sup>1</sup> [Smallwood v. District of Columbia](#), 17 F.2d 210 (App. D.C. 1927); [Chicago Park Dist. v. Canfield](#), 370 Ill. 447, 19 N.E.2d 376, 121 A.L.R. 557 (1939).

<sup>2</sup> [Garneau v. Eggers](#), 113 N.J.L. 245, 174 A. 250 (N.J. Sup. Ct. 1934); [City of Columbia v. Alexander](#), 125 S.C. 530, 119 S.E. 241, 32 A.L.R. 746 (1923).

<sup>3</sup> [Peconic Ave. Businessmens' Ass'n v. Town of Brookhaven](#), 98 A.D.2d 772, 469 N.Y.S.2d 483 (2d Dep't 1983).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 2. Exclusion or Restriction of Certain Traffic

## § 236. Exclusion of snowmobiles

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [324](#), [335](#)

### A.L.R. Library

[Criminal liability based on violation of statute or ordinance specifically regulating operation of snowmobile, 45 A.L.R.3d 1438](#)

A conviction for violating a statute prohibiting the operation of a snowmobile on a certain roadway, or parts thereof, has been sustained despite the defendant's contention that his use of the roadway was necessitated by the presence of a guardrail precluding his entry onto a path bordering the left side of the roadway.<sup>1</sup>

A conviction has also been sustained for violating a regulation prohibiting the operation of an unregistered snowmobile on a public highway.<sup>2</sup>

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### Footnotes

<sup>1</sup> [State v. Johnson, 289 Minn. 196, 183 N.W.2d 541, 45 A.L.R.3d 1432 \(1971\).](#)

<sup>2</sup> [People v. Sowle, 68 Misc. 2d 569, 327 N.Y.S.2d 510 \(County Ct. 1971\).](#)

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 2. Exclusion or Restriction of Certain Traffic

## § 237. Restriction of portions of ways to particular kinds of traffic

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [324](#), [335](#)

### A.L.R. Library

[Power of municipal corporation to limit exclusive use of designated lanes or streets to buses and taxicabs](#), 43 A.L.R.3d 1394

A public authority may in the interest of the public safety or convenience, by regulations that are reasonable under the circumstances, restrict traffic or specific kinds of traffic to particular lanes or portions of a way.<sup>1</sup> For example, a municipality may designate portions of a street to be used by vehicles or a particular class of vehicles, and reserve other portions, such as safety zones,<sup>2</sup> for the exclusive use of pedestrians.

An ordinance may require slow-moving vehicles to keep to one side of a street at points where traffic is heavy or the street is usually congested.<sup>3</sup> That portion of the street so designated must be reasonably suited for the purpose, however, and if it is not so suited, or is absolutely impassable, then the ordinance is unreasonable and cannot be enforced.<sup>4</sup>

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### Footnotes

<sup>1</sup> [City of Cleveland v. Gustafson](#), 124 Ohio St. 607, 11 Ohio L. Abs. 416, 180 N.E. 59, 79 A.L.R. 1325 (1932);

Blackburn v. Dillon, 189 Tenn. 240, 225 S.W.2d 46 (1949).

<sup>2</sup> District of Columbia v. Manning, 18 F.2d 806, 53 A.L.R. 167 (App. D.C. 1927); City of Cleveland v. Gustafson, 124 Ohio St. 607, 11 Ohio L. Abs. 416, 180 N.E. 59, 79 A.L.R. 1325 (1932).

<sup>3</sup> State v. Bussian, 111 Minn. 488, 127 N.W. 495 (1910).

<sup>4</sup> Brown v. Nichols, 93 Kan. 737, 145 P. 561 (1915).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 2. Exclusion or Restriction of Certain Traffic

## § 238. Restriction as to direction of traffic; one-way streets

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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### Forms

Forms regarding one-way streets, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic  
[\[Westlaw® Search Query\]](#)

A public authority invested with the power to control and regulate the use of streets or highways may restrict travel on particular ways or portions thereof to one direction, when such a regulation is reasonably calculated to promote public safety or convenience.<sup>1</sup> For example, a municipality having exclusive control over its streets may, by ordinance, confine traffic on narrow streets to one direction.<sup>2</sup>

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### Footnotes

<sup>1</sup> [Scranton v. Crosby](#), 298 Mass. 15, 9 N.E.2d 391 (1937); [Ganly v. Steel Storage & Trucking Corporation](#), 259 N.Y. 396, 182 N.E. 60 (1932); [Senger v. Vancouver-Portland Bus Co.](#), 209 Or. 37, 298 P.2d 835, 62 A.L.R.2d 265 (1956).

<sup>2</sup> [Commonwealth v. Nolan](#), 189 Ky. 34, 224 S.W. 506, 11 A.L.R. 202 (1920).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

#### 3. Traffic Signs, Lights, and Signals

## § 239. Traffic signs, lights, and signals, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [324](#), [333](#), [335](#)

### Forms

Forms regarding intersections, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic  
[\[Westlaw® Search Query\]](#)

Provision is generally made by statute or ordinance for the erection of traffic control devices, such as stop signs,<sup>1</sup> and traffic lights or signals,<sup>2</sup> which motorists are required to obey, unless otherwise directed by police officials.<sup>3</sup> Local authorities are ordinarily permitted to place and maintain traffic control devices to carry out the rules of the road and to regulate, warn, or guide traffic.<sup>4</sup> However, there is no duty to obey a mere warning sign, such as a “slow” sign, since such a sign is only a recommendation and a failure to take the action recommended is not, in itself, a statutory violation.<sup>5</sup>

### Practice Tip:

The proper positioning of a traffic control device is not an element of the offense of failure to obey a traffic control device, but may be a fact that the defendant is entitled to establish by way of defense.<sup>6</sup>



A state statute authorizing cities to regulate traffic by means of traffic control signals has been held not to authorize city ordinances for photo-enforcement of traffic control signals, as the statute only authorizes cities to direct the movement of vehicles on roadways.<sup>7</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

There is no criminal liability for violation of a traffic control device that is unofficial, such as, not in conformity with the Ohio Department of Transportation's Manual of Uniform Traffic Control Devices (OMUTCD). [Ohio Rev. Code Ann. § 4511.12](#). [State v. Jackson, 2019-Ohio-4206, 134 N.E.3d 233](#) (Ohio Ct. App. 12th Dist. Butler County 2019), appeal not allowed, [157 Ohio St. 3d 1565, 2020-Ohio-313, 138 N.E.3d 1170 \(2020\)](#).

## [END OF SUPPLEMENT]

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### Footnotes

<sup>1</sup> [§ 241](#).

<sup>2</sup> [§ 240](#).

<sup>3</sup> [Theriot v. Bergeron, 939 So. 2d 379 \(La. Ct. App. 1st Cir. 2006\)](#) (holding that a motorist must comply with the lawful order or directive of a police officer invested with the authority to direct traffic, irrespective of signals of traffic control devices).

<sup>4</sup> [State v. Lee, 265 Neb. 663, 658 N.W.2d 669 \(2003\)](#).

<sup>5</sup> [Northup v. Gage, 6 A.D.2d 748, 173 N.Y.S.2d 927 \(4th Dep't 1958\)](#), judgment aff'd, [5 N.Y.2d 863, 182 N.Y.S.2d 16, 155 N.E.2d 864 \(1958\)](#); [City Of Cuyahoga Heights v. Howard, 2003-Ohio-2862, 2003 WL 21290908](#) (Ohio Ct. App. 8th Dist. Cuyahoga County 2003).  
As to the effect of traffic signs, lights, and signals on the right of way, see §§ [290](#) to [304](#).

<sup>6</sup> [State v. Boly, 210 Or. App. 132, 149 P.3d 1237 \(2006\)](#).

<sup>7</sup> [State v. Kuhlman, 729 N.W.2d 577 \(Minn. 2007\)](#).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

#### 3. Traffic Signs, Lights, and Signals

## § 240. Traffic lights or signals

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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### Forms

Forms regarding traffic lights, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic  
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Statutes or ordinances usually provide for the erection of traffic lights or signals, which, provided they are erected in accordance with prescribed requirements, must be obeyed by pedestrians as well as motorists. As a rule, motorists approaching an intersection in the face of a green traffic light may proceed,<sup>1</sup> provided they are traveling at a reasonable speed and are maintaining a general observation of the intersection,<sup>2</sup> although, when they are approaching from some distance away, they are required to anticipate that the light will change, and under certain circumstances they may be under an affirmative duty to reduce their speed.<sup>3</sup> Moreover, a motorist who has the light in his or her favor is under a duty to stop or slow down to permit pedestrians or other motorists lawfully in the intersection before the change of light to clear it.<sup>4</sup> Such a motorist also has a duty to avoid an accident with another vehicle whose driver is obviously unable or unwilling to comply with the red light,<sup>5</sup> but is not required to stop at a point within the intersection to ascertain whether vehicles approaching at right angles are going to “crash” the light.<sup>6</sup>

Motorists facing a steady red traffic signal ordinarily have a duty to stop,<sup>7</sup> and passing through a red light generally constitutes an offense.<sup>8</sup>

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Footnotes

- <sup>1</sup> State v. Adams, 273 Minn. 228, 140 N.W.2d 847 (1966); Shea v. Judson, 283 N.Y. 393, 28 N.E.2d 885 (1940).
- <sup>2</sup> Youngblood v. Robison, 239 La. 338, 118 So. 2d 431, 2 A.L.R.3d 1 (1960).
- <sup>3</sup> Rose v. Campitello, 114 Conn. 637, 159 A. 887 (1932); Shea v. Judson, 283 N.Y. 393, 28 N.E.2d 885 (1940).
- <sup>4</sup> Labbee v. Anderson, 149 Conn. 58, 175 A.2d 370, 2 A.L.R.3d 150 (1961); Galliano v. East Penn Electric Co., 303 Pa. 498, 154 A. 805 (1931).
- <sup>5</sup> Shea v. Judson, 283 N.Y. 393, 28 N.E.2d 885 (1940).
- <sup>6</sup> Roberts v. Krasny, 35 Ohio L. Abs. 314, 40 N.E.2d 458 (Ct. App. 8th Dist. Cuyahoga County 1941).
- <sup>7</sup> Hurtel v. Albert Cohn, Inc., 5 Cal. 2d 145, 52 P.2d 922 (1936); Lieberman v. McLaughlin, 233 Ky. 763, 26 S.W.2d 753 (1930); Merkling v. Ford Motor Co., 251 A.D. 89, 296 N.Y.S. 393 (4th Dep't 1937); Hubbard v. Luchansky, 102 Ohio App. 3d 410, 657 N.E.2d 352 (11th Dist. Trumbull County 1995).
- <sup>8</sup> People v. Pickard, 22 Misc. 2d 566, 198 N.Y.S.2d 832 (Spec. Sess. 1960).

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## 7A Am. Jur. 2d Automobiles § 241

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 3. Traffic Signs, Lights, and Signals

## § 241. Stop signs

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

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### Forms

Forms regarding stop signs, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic  
[\[Westlaw® Search Query\]](#)

A statute or ordinance requiring motorists to stop at stop signs, except when directed to proceed by a police officer or superior traffic control signal, constitutes a valid exercise of the police power.<sup>1</sup>

A motorist is normally under a duty to stop in obedience to a stop sign protecting an intersection he or she is about to enter,<sup>2</sup> and this requires a full stop,<sup>3</sup> not just a slowing down.<sup>4</sup> The fact that when a motorist reaches a stop sign there are, in his or her judgment or knowledge, no other vehicles sufficiently close to the intersection to constitute a hazard does not affect the motorist's duty to bring his or her vehicle to a full stop.<sup>5</sup> The actual stopping at a stop sign must consume more than a mere moment of time,<sup>6</sup> although it is not necessary that it be for such a length of time as will permit all vehicles to pass the intersection that were on the through road and visible to the motorist as he or she stopped.<sup>7</sup> Where a stop sign is not positioned in a manner required by statute, it cannot support a conviction for running the stop sign.<sup>8</sup>

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### Footnotes

- <sup>1</sup> [City of Des Moines v. Pugh](#), 231 Iowa 1283, 2 N.W.2d 754 (1942).
- <sup>2</sup> [State v. Maze](#), 16 Kan. App. 2d 527, 825 P.2d 1169 (1992); [People v. Soe](#), 9 Misc. 3d 1069, 805 N.Y.S.2d 262 (J. Ct. 2005).  
A motorist facing a stop sign is not only under a duty to stop before entering the intersection, but is also required to make further observations while proceeding through the intersection. [State v. Jamerson](#), 153 N.J. 318, 708 A.2d 1183 (1998).
- <sup>3</sup> [Arkansas Power & Light Co. v. Cummins](#), 181 Ark. 1145, 182 Ark. 1, 28 S.W.2d 1077 (1930).
- <sup>4</sup> [Williams v. Kemp](#), 266 A.D. 891, 42 N.Y.S.2d 789 (3d Dep't 1943).
- <sup>5</sup> [City of Des Moines v. Pugh](#), 231 Iowa 1283, 2 N.W.2d 754 (1942).
- <sup>6</sup> [Garrison v. Burns](#), 178 Va. 1, 16 S.E.2d 306 (1941) (referring to more than a "split second" of time).
- <sup>7</sup> [Little v. Gogotz](#), 324 Ill. App. 516, 58 N.E.2d 336 (1st Dist. 1944).
- <sup>8</sup> [Painesville v. Kincaid](#), 2015-Ohio-5532, 57 N.E.3d 152 (Ohio Ct. App. 11th Dist. Lake County 2015) (stop sign was mounted less than five feet above the elevation of the near edge of the traveled way, contrary to statutory requirement).

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## 7A Am. Jur. 2d Automobiles § 242

American Jurisprudence, Second Edition | May 2021 Update

### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

#### 3. Traffic Signs, Lights, and Signals

## § 242. Stop signs—Where stop should be made

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [324](#), [333](#), [335](#)

Where an applicable statute or ordinance designates specifically where, in relation to an intersection, a stop should be made in compliance with a stop sign, such as at a clearly marked stop line, it is controlling.<sup>1</sup> However, statutes and ordinances relating to stop signs often omit to designate any such particular place at which stops should be made. In interpreting such provisions, the courts have variously given approval to stops: at the stop sign, at least where it is located reasonably near the property line of the favored thoroughfare;<sup>2</sup> at a point where the motorist has a sufficient view of the through street to enable him or her properly to observe traffic approaching thereon;<sup>3</sup> and at the prolongation of the property line of the through road.<sup>4</sup> On the other hand, under the facts and circumstances involved in particular cases, the courts have denied the sufficiency of stops: at any point between the stop sign and the nearest property line of the through street;<sup>5</sup> at the stop sign, where it is located too far from the favored thoroughfare to permit a proper observation of traffic thereon;<sup>6</sup> and at the curb line of the through street.<sup>7</sup>

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### Footnotes

- <sup>1</sup> [State v. Young](#), 144 Idaho 646, 167 P.3d 783 (Ct. App. 2006); [People v. McIntosh](#), 23 Mich. App. 412, 178 N.W.2d 809 (1970).
- <sup>2</sup> [Goldstein v. Kaplan](#), 116 Conn. 597, 165 A. 794 (1933); [Anderson v. Detroit Motorbus Co.](#), 239 Mich. 390, 214 N.W. 172 (1927).
- <sup>3</sup> [Bassett v. Edwards](#), 158 Fla. 848, 30 So. 2d 374 (1947); [Satter v. Turner](#), 251 Minn. 1, 86 N.W.2d 85, 66 A.L.R.2d 1178 (1957); [Pyle v. Wilbert](#), 2 Wash. 2d 429, 98 P.2d 664 (1940).

<sup>4</sup> Schrage v. Miller, 123 Neb. 266, 242 N.W. 649 (1932).

<sup>5</sup> Galway v. Guggolz, 117 Cal. App. 639, 4 P.2d 290 (3d Dist. 1931).

<sup>6</sup> Olson v. Musselman, 127 Conn. 228, 15 A.2d 879 (1940); Hamilton v. Cadwell, 195 Wash. 683, 81 P.2d 815 (1938).

<sup>7</sup> Hansen v. Goetz, 37 Ohio L. Abs. 112, 46 N.E.2d 293 (Ct. App. 2d Dist. Montgomery County 1942).

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## 7A Am. Jur. 2d Automobiles § 243

American Jurisprudence, Second Edition | May 2021 Update

### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

#### 4. Turning

## § 243. Turning, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(2\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [117](#), [324](#), [329](#), [335](#)

### Trial Strategy

[Proof of Negligence in a Turning Accident or Jackknifing of a Truck](#), 66 Am. Jur. Proof of Facts 3d 379

[Negligent Left Turn of Motor Vehicle](#), 35 Am. Jur. Proof of Facts 2d 405

### Forms

Forms regarding turning, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic [\[Westlaw® Search Query\]](#)

Statutes or ordinances generally provide that motorists, in making right turns at intersections, must approach and make the turn as close as practicable to the right-hand edge of the roadway.<sup>1</sup> With regard to left turns, it is usually provided by statute or ordinance that they must be made to the right of the center point of the intersecting road;<sup>2</sup> but such a provision does not apply to left turns at the intersection of a highway with a private road or driveway.<sup>3</sup>

In making a left turn from a highway containing more than one lane in the direction in which the vehicle is proceeding,



motorists are generally required to make the turn from the inside lane, that is, the lane nearest the center line of the highway.<sup>4</sup> In making a left turn at an intersection, the motorist must begin the turn some time before crossing the center of the intersection.<sup>5</sup>

Statutes in some jurisdictions provide that no person may turn a vehicle from a direct course on a highway unless the movement can be made with reasonable safety.<sup>6</sup> Such a statute does not require a motorist to know that a turn can be made in complete safety, but only that he or she must exercise reasonable care.<sup>7</sup> Other statutes provide that every person operating a vehicle on a highway should, before turning, see that there is sufficient space for the turn to be made in safety.<sup>8</sup>

Where, some, but not all, oncoming vehicles have yielded their right of way to a left-turning driver, that driver has a continuing duty during the turn to ascertain, before proceeding across the next open lane, if any vehicle is approaching from the opposite direction so close as to constitute a hazard.<sup>9</sup>

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#### Footnotes

- <sup>1</sup> [Thom v. Poss](#), 278 F.2d 811, 7 A.L.R.3d 275 (9th Cir. 1960); [Lurie v. Nelson](#), 186 Cal. App. 2d 377, 8 Cal. Rptr. 869 (2d Dist. 1960).
- <sup>2</sup> [State v. Larrabee](#), 104 Minn. 37, 115 N.W. 948 (1908).
- <sup>3</sup> [Tossman v. Newman](#), 37 Cal. 2d 522, 233 P.2d 1 (1951).
- <sup>4</sup> [Richards v. Warner Co.](#), 311 Pa. 50, 166 A. 496, 87 A.L.R. 1159 (1933).
- <sup>5</sup> [State v. Cuevas](#), 214 Ariz. 393, 153 P.3d 414 (Ct. App. Div. 2 2007), review denied and ordered depublished, 217 Ariz. 148, 171 P.3d 599 (2007).
- <sup>6</sup> [Butigan v. Yellow Cab Co.](#), 49 Cal. 2d 652, 320 P.2d 500, 65 A.L.R.2d 1 (1958); [Peake v. Omaha Cold Storage Co.](#), 158 Neb. 676, 64 N.W.2d 470 (1954).
- <sup>7</sup> [Butigan v. Yellow Cab Co.](#), 49 Cal. 2d 652, 320 P.2d 500, 65 A.L.R.2d 1 (1958); [Green v. Boney](#), 233 S.C. 49, 103 S.E.2d 732, 66 A.L.R.2d 1370 (1958).
- <sup>8</sup> [Stockdale v. Eads](#), 314 Ky. 384, 235 S.W.2d 998 (1951); [Stovall v. Ragland](#), 211 N.C. 536, 190 S.E. 899 (1937).
- <sup>9</sup> [Sesler v. Ghumman](#), 219 Cal. App. 3d 218, 268 Cal. Rptr. 70 (4th Dist. 1990).

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## 7A Am. Jur. 2d Automobiles § 244

American Jurisprudence, Second Edition | May 2021 Update

### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

#### 4. Turning

## § 244. Turn signals

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(2\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [117](#), [324](#), [329](#), [335](#)

To provide adequate warning to others of a vehicle's imminent movement from one direction to another and give them an opportunity to react,<sup>1</sup> in many jurisdictions, motorists are prohibited by statute from making turns at intersections or other places without using turn signals, at least where other motorists may be affected by such movement.<sup>2</sup> Such a statute is violated when a motorist fails to signal when making a lane change.<sup>3</sup> The signal required to be given by the operator of a turning vehicle is not only for the protection of vehicles in its rear, but also for the protection of all vehicles whose movements may reasonably be affected by the change in direction.<sup>4</sup> Factors affecting the adequacy of the signal include the manner in which it is given and the time it provides others to perceive the warning and react to it.<sup>5</sup> A lighted turn signal which does not blink does not satisfy the statutory mandate to signal an intention to turn.<sup>6</sup>

In some states, a motorist may be required to signal when merging from an on-ramp directly onto the right lane of a highway.<sup>7</sup>

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### Footnotes

<sup>1</sup> [State v. Greever](#), 37 Kan. App. 2d 145, 150 P.3d 918 (2007), decision rev'd on other grounds, 286 Kan. 124, 183 P.3d 788 (2008).

<sup>2</sup> [State v. Malloy](#), 453 N.W.2d 243 (Iowa Ct. App. 1990); [State v. Ivey](#), 360 N.C. 562, 633 S.E.2d 459 (2006) (abrogated on other grounds by, [State v. Styles](#), 362 N.C. 412, 665 S.E.2d 438 (2008)); [Smith v. State ex rel. Department of Public Safety](#), 2005 OK CIV APP 69, 120 P.3d 897 (Div. 3 2005); [State v. Eidahl](#), 495 N.W.2d 91 (S.D. 1993).

In some states, though, it is illegal to make a turn without signaling, regardless of whether the turn is made safely or affects other traffic. *U.S. v. Conway*, 53 Fed. Appx. 872 (10th Cir. 2002) (applying Kansas law); *Torres v. State*, 2003 WL 68056 (Tex. App. El Paso 2003).

<sup>3</sup> *State v. Geis*, 779 N.E.2d 1194 (Ind. Ct. App. 2002); *People v. Rice*, 44 A.D.3d 247, 841 N.Y.S.2d 72 (1st Dep't 2007); *Tripp v. State ex rel. Department of Public Safety*, 2005 OK CIV APP 47, 117 P.3d 266 (Div. 3 2005); *Coleman v. State*, 188 S.W.3d 708 (Tex. App. Tyler 2005), petition for discretionary review refused, (Apr. 5, 2006).

<sup>4</sup> *Caldwell v. Drew*, 109 N.H. 91, 243 A.2d 304 (1968).

<sup>5</sup> *State v. Greever*, 37 Kan. App. 2d 145, 150 P.3d 918 (2007), decision rev'd on other grounds, 286 Kan. 124, 183 P.3d 788 (2008).

<sup>6</sup> *Coleman v. State*, 188 S.W.3d 708 (Tex. App. Tyler 2005), petition for discretionary review refused, (Apr. 5, 2006).

<sup>7</sup> *U.S. v. Gregoire*, 425 F.3d 872 (10th Cir. 2005) (applying Utah law); *U.S. v. Ortega*, 379 F. Supp. 2d 1177 (D. Kan. 2005) (applying Kansas law).

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## 7A Am. Jur. 2d Automobiles § 245

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 4. Turning

## § 245. Turn signals—Right to rely on turn signals or other indications of turning

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(2\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [117](#), [324](#), [329](#), [335](#)

### A.L.R. Library

[Negligence or contributory negligence of motorist in failing to proceed in accordance with turn signal given](#), 84 A.L.R.4th 124

Once a motorist has given a signal of his or her intention to turn, particularly when the signal is coupled with other indications of such intention, an approaching motorist has some right to rely on the signal.<sup>1</sup> Thus, a motorist may be negligent in leading another motorist to rely on a turn signal, where such signal is coupled with other indications of an intention to turn.<sup>2</sup>

Where a vehicle driver observes another vehicle ahead signaling a left turn, apparently to enter a side road, the first vehicle driver is justified in assuming that the second vehicle driver will continue into the side road and permit him or her to go forward without danger.<sup>3</sup>

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### Footnotes

<sup>1</sup> [Wardell v. Jerman](#), 18 Utah 2d 359, 423 P.2d 485 (1967).

<sup>2</sup> [Jones v. Concrete Ready-Mix, Inc.](#), 464 F.2d 1323 (5th Cir. 1972) (driver who, in relation to motorist waiting to enter intersection from right, not only flashed right-turn indicator light but also drove in right-hand lane and slowed down on approaching intersection); [Dotson v. Cantrell](#), 458 S.W.2d 10 (Ky. 1970) (same).

<sup>3</sup> [Kleckner v. Great Am. Indem. Co.](#), 257 Wis. 574, 44 N.W.2d 560 (1950).

## 7A Am. Jur. 2d Automobiles § 246

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 4. Turning

## § 246. U-turns

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [117](#), [324](#), [335](#)

### A.L.R. Library

[Automobiles: liability for U-turn collisions](#), 53 A.L.R.4th 849

### Trial Strategy

[U-Turn Accidents](#), 130 Am. Jur. Proof of Facts 3d 353

Unless prohibited by statute or ordinance, the law of the road does not prohibit the making of a U-turn by a motorist on a public highway.<sup>1</sup> However, statutes or ordinances frequently prohibit the making of U-turns in certain places,<sup>2</sup> such as on curves or near the crest of certain grades,<sup>3</sup> or in business districts.<sup>4</sup>

Even if the making of a U-turn is not prohibited, in making such a turn motorists are required to exercise a degree of care commensurate with the increased danger resulting from the operation of his or her vehicle in this manner,<sup>5</sup> and to yield the right of way to approaching motorists.<sup>6</sup> However, while a motorist approaching from the opposite direction has the right of way over a motorist making a U-turn, this does not give him or her an absolute right to proceed once he or she has become

aware, or in the exercise of due care should have become aware, of the presence of the motorist making the U-turn;<sup>7</sup> rather, he or she must proceed with care and caution to prevent a collision.<sup>8</sup>

A statute prohibiting motorists from making turns at intersections or other places unless such movement can be made with reasonable safety governs a motorist making a U-turn at a crossover on a divided highway.<sup>9</sup>

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#### Footnotes

- <sup>1</sup> [Armstead v. Lounsberry](#), 129 Minn. 34, 151 N.W. 542 (1915); [Basil v. Pope](#), 165 Wash. 212, 5 P.2d 329 (1931).
- <sup>2</sup> [Miller v. State](#), 243 Ga. App. 764, 533 S.E.2d 787 (2000); [People v. McDermott](#), 15 A.D.3d 595, 790 N.Y.S.2d 678 (2d Dep't 2005).
- <sup>3</sup> [Condon v. Epstein](#), 8 Misc. 2d 674, 168 N.Y.S.2d 189 (N.Y. City Ct. 1957).
- <sup>4</sup> [Butigan v. Yellow Cab Co.](#), 49 Cal. 2d 652, 320 P.2d 500, 65 A.L.R.2d 1 (1958) (holding, however, that such a statute did not prohibit making a left turn into a private driveway and backing out of the driveway, even though the driver's purpose was to proceed in the opposite direction); [People v. Kassover](#), 24 Misc. 2d 1080, 205 N.Y.S.2d 428 (Spec. Sess. 1960).
- <sup>5</sup> § 854.
- <sup>6</sup> [People v. Marsh](#), 8 Cal. App. 4th Supp. 1, 11 Cal. Rptr. 2d 768 (App. Dep't Super. Ct. 1992); [McComb v. Boardman](#), 199 A.D. 229, 191 N.Y.S. 874 (3d Dep't 1921).
- <sup>7</sup> [Condon v. Epstein](#), 8 Misc. 2d 674, 168 N.Y.S.2d 189 (N.Y. City Ct. 1957).
- <sup>8</sup> § 854.
- <sup>9</sup> [People v. Korytowski](#), 14 Misc. 2d 417, 179 N.Y.S.2d 424 (County Ct. 1958).

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## 7A Am. Jur. 2d Automobiles § 247

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 5. Portion of Way to Be Used; Following, Approaching, and Passing Other Vehicles

###### a. Portion of Way to Be Used; Following, Approaching, and Passing Other Vehicles, In General

## § 247. Portion of way to be used

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [324](#), [335](#)

### Trial Strategy

[Divider Line Automobile Accident Cases](#), 10 Am. Jur. Trials 493

### Forms

Forms regarding wrong side of the road, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic [\[Westlaw® Search Query\]](#)

Motorists are generally required by statute or ordinance to proceed in the right-hand portion of a roadway,<sup>1</sup> that is, to the right of the center line of the road.<sup>2</sup> Thus, in proceeding on divided highways, motorists must ordinarily drive on the right-hand portion thereof,<sup>3</sup> although a momentary crossing of the center line may not be considered a traffic violation.<sup>4</sup> A motorist's driving onto but not across the line marking the right side of a traffic lane does not violate a statute that requires a vehicle to be driven entirely within a single lane of traffic, until such time as the driver ascertains that moving between lanes may done



safely, as such a statute regulates the interaction of traffic between lanes, not a driver's interaction with the sidewalk, curb, or shoulder.<sup>5</sup> A driver may not be held guilty of failing to obey a traffic control device regulating lane usage where lane markings and signs conflict and do not give motorists sufficient notice of the required lane usage.<sup>6</sup>

**Reminder:**

Statutes requiring motorists to proceed in the right half of a highway are generally held not to apply to motorists who are backing.<sup>7</sup>

A statute prohibiting vehicles from proceeding in an emergency lane except in the event of an actual emergency has been held not to be unconstitutionally vague, even though it does not define the term "emergency lane."<sup>8</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Administrative regulation providing that, when three lanes of traffic are provided for travel in same direction, vehicles operated at rate of speed "below maximum in effect" shall drive in outer lane and use center lane for passing only, was impermissibly inconsistent with statute providing that "any vehicle ... traveling at less than prevailing and lawful speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane"; regulation covered same subject matter as statute, it impermissibly added element of speed to statute, insofar as "maximum in effect" was actually intended to mean posted speed limit, while statute did not restrict use of center lane on three-lane highway to vehicles traveling at posted speed limit, but rather, required only that driver be in far-right lane when he or she was not traveling at rate of speed comparable to other reasonable and lawful drivers at time and under existing conditions. [Ohio Rev. Code Ann. § 4511.25\(B\)](#); [Ohio Admin. Code 5537-2-09](#). [State v. Clark, 2018-Ohio-2029, 101 N.E.3d 758](#) (Ohio Ct. App. 6th Dist. Wood County 2018).

## [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> [State v. Hopper, 260 Kan. 66, 917 P.2d 872 \(1996\)](#); [People v. Streisfeld, 159 Misc. 2d 44, 602 N.Y.S.2d 521 \(J. Ct. 1993\)](#); [State v. Leichty, 68 Ohio St. 3d 37, 1993-Ohio-215, 623 N.E.2d 48 \(1993\)](#); [Hansen v. Eyre, 2003 UT App 274, 74 P.3d 1182 \(Utah Ct. App. 2003\)](#), [aff'd, 2005 UT 29, 116 P.3d 290 \(Utah 2005\)](#).  
Weaving onto the wrong side of a roadway is a traffic violation. [State v. Bachmeier, 2007 ND 42, 729 N.W.2d 141 \(N.D. 2007\)](#).
- <sup>2</sup> [Comby v. State, 901 So. 2d 1282 \(Miss. Ct. App. 2004\)](#).
- <sup>3</sup> [State v. Chamberlin, 872 S.W.2d 615 \(Mo. Ct. App. W.D. 1994\)](#).
- <sup>4</sup> [State v. Tague, 676 N.W.2d 197 \(Iowa 2004\)](#).
- <sup>5</sup> [State v. Neal, 159 Idaho 439, 362 P.3d 514 \(2015\)](#).

<sup>6</sup> [Shaker Hts. v. Rosenberg, 2013-Ohio-1182, 988 N.E.2d 28](#) (Ohio Ct. App. 8th Dist. Cuyahoga County 2013) (defendant who changed lanes to the left from a lane marked right turn only did not fail to obey a traffic control device where his conduct was brought about by traffic signs and lane markings that conflicted, and lane drop markings that failed to give him, and any motorist, sufficient notice that the lane was being dropped).

<sup>7</sup> [§ 229](#).

<sup>8</sup> [Payne v. State, 275 Ga. 181, 563 S.E.2d 844 \(2002\)](#).

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## 7A Am. Jur. 2d Automobiles § 248

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 5. Portion of Way to Be Used; Following, Approaching, and Passing Other Vehicles

###### a. Portion of Way to Be Used; Following, Approaching, and Passing Other Vehicles, In General

## § 248. Distance of following vehicle from vehicle ahead

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [324](#), [335](#)

### A.L.R. Library

[Modern status of sudden emergency doctrine](#), 10 A.L.R.5th 680

[Driver's failure to maintain proper distance from motor vehicle ahead](#), 85 A.L.R.2d 613

### Trial Strategy

[Driver's Failure to Maintain Proper Lookout](#), 40 Am. Jur. Proof of Facts 2d 411

[Tailgating](#), 22 Am. Jur. Proof of Facts 43

[Handling a Rear-End Collision Case](#), 19 Am. Jur. Trials 567

### Forms

Forms regarding rear-end collisions, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic [[Westlaw® Search Query](#)]

In some jurisdictions, statutes prescribe the distance to be maintained by a following motor vehicle from the one ahead of it, some in general language—such as a reasonable or prudent distance from the vehicle ahead<sup>1</sup>—and others by reference to a specified number of feet for certain types of motor vehicles or under certain circumstances.<sup>2</sup> Such statutes have been interpreted to mean that the drivers of the front and rear cars must both exercise ordinary care to avoid a collision, and what precautions the driver of the rear car must take to avoid colliding with a car that stops or slows up in front of him or her, cannot be formulated in any precise rule.<sup>3</sup> As a general rule, the primary duty to avoid collision as between the motorist ahead and the motorist following lies with the motorist to the rear.<sup>4</sup> Generally, then, where two motorists are operating vehicles proceeding in the same direction, the motorist to the rear must keep a safe distance behind the motorist ahead,<sup>5</sup> maintain a reasonably safe rate of speed and control over his or her vehicle, and exercise reasonable care,<sup>6</sup> so as to avoid collision with the vehicle ahead when it is being driven in accordance with the law.<sup>7</sup> The motorist to the rear must keep such distance from the motorist ahead and maintain such observation of him or her that an emergency stop may safely be made,<sup>8</sup> although the former need not anticipate an emergency stop required when the latter collides unexpectedly with another vehicle,<sup>9</sup> or when the latter, without warning, suddenly backs out of an angled parking space into the path of the former.<sup>10</sup> Moreover, a motorist to the rear does not violate the rule that a motorist must be able to stop within an assured clear distance ahead<sup>11</sup> where hazards arise that could not have been anticipated, such as the abrupt and unexpected stopping of the vehicle ahead,<sup>12</sup> or the sudden swerving of a forward vehicle.<sup>13</sup>

Traffic regulations may prohibit a vehicle from entering an intersection if traffic is stopped on the opposite side.<sup>14</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Trooper developed reasonable suspicion that defendant's vehicle was following semi-truck too closely by using the two-second rule to measure distance between the two vehicles multiple times, and thus, defendant was not seized in violation of Fourth Amendment when trooper stopped him for following another vehicle too closely. [U.S. Const. Amend. 4](#); [Wyo. Stat. Ann. § 31-5-210\(a\)](#). [Robinson v. State](#), 2019 WY 125, 454 P.3d 149 (Wyo. 2019).

### [END OF SUPPLEMENT]

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### Footnotes

<sup>1</sup> [Wrinn v. State](#), 234 Conn. 401, 661 A.2d 1034 (1995); [State v. Clay](#), 756 A.2d 894 (Del. Super. Ct. 2000); [State v. Quinones](#), 2003-Ohio-6727, 2003 WL 22939467 (Ohio Ct. App. 7th Dist. Mahoning County 2003); [State v. Harton](#), 108 S.W.3d 253 (Tenn. Crim. App. 2002).

<sup>2</sup> [Southwestern Freight Lines v. Floyd](#), 58 Ariz. 249, 119 P.2d 120 (1941) (truck not to follow another truck within 100 feet, outside business or residence district); [Christman v. Weil](#), 196 Md. 207, 76 A.2d 144 (1950) (commercial vehicles not to follow each other within 150 feet, outside business or residence district).

<sup>3</sup> [Glass v. Anne Arundel County](#), 38 F. Supp. 3d 705 (D. Md. 2014).

- 4 Clemencia v. Mitchell, 956 A.2d 76 (D.C. 2008).
- 5 Rhea v. Daigle, 72 So. 2d 643 (La. Ct. App. 1st Cir. 1954).
- 6 Hauswirth v. Transcare New York, Inc., 97 A.D.3d 792, 949 N.Y.S.2d 154 (2d Dep't 2012).
- 7 Pupillo v. Eakin, 147 So. 2d 441 (La. Ct. App. 2d Cir. 1962).
- 8 Ritter v. Johnson, 163 Wash. 153, 300 P. 518, 79 A.L.R. 1270 (1931).
- 9 Stevenson v. Campbell, 17 La. App. 142, 134 So. 718 (2d Cir. 1931); Rhea v. Daigle, 72 So. 2d 643 (La. Ct. App. 1st Cir. 1954).
- 10 Ward v. Cox, 38 A.D.3d 313, 831 N.Y.S.2d 406 (1st Dep't 2007).
- 11 § 275.
- 12 Campbell v. Employers Ins. Co. of Alabama, 521 So. 2d 924 (Ala. 1988); Chodorov v. Eley, 239 Va. 528, 391 S.E.2d 68 (1990); Timmons v. Reed, 569 P.2d 112 (Wyo. 1977).
- 13 Bochnak v. Mackes, 159 A.D.2d 882, 553 N.Y.S.2d 520 (3d Dep't 1990); Unangst v. Whitehouse, 235 Pa. Super. 458, 344 A.2d 695 (1975).
- 14 People v. Horowitz, 5 Misc. 3d 415, 782 N.Y.S.2d 185 (N.Y. City Ct. 2004).

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## 7A Am. Jur. 2d Automobiles § 249

American Jurisprudence, Second Edition | May 2021 Update

### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 5. Portion of Way to Be Used; Following, Approaching, and Passing Other Vehicles

##### b. Passing Other Vehicles

## § 249. Passing other vehicles, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [324](#), [335](#)

### A.L.R. Library

[Motorists' liability for signaling other vehicle or pedestrian to proceed, or to pass signaling vehicle, 14 A.L.R.5th 193](#)

[Reciprocal rights, duties, and liabilities where motor vehicle driver, passing on left of other vehicle proceeding in same direction, cuts back to the right, 48 A.L.R.2d 232](#)

### Trial Strategy

[Proof of Negligence of Motorist in Signaling Other Vehicle or Pedestrian to Proceed or to Pass, 31 Am. Jur. Proof of Facts 3d 145](#)

### Forms

Forms regarding passing, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic  
[\[Westlaw® Search Query\]](#)

Generally, when vehicles are proceeding along a highway or street in the same direction, the motorist to the rear may, at a proper place,<sup>1</sup> and if not within a no-passing zone,<sup>2</sup> pass the forward vehicle when he or she may do so safely.<sup>3</sup> The overtaking motorist may not pass the motorist ahead unless he or she has reason to believe that the road is clear of obstacles which might obstruct his or her passage.<sup>4</sup> If there is not sufficient room for a safe passage, the overtaking motorist should wait until a place is reached where a safe passage may be made, and if, after turning out to pass, the overtaking motorist finds conditions to be such that he or she cannot make the passage in safety, he or she should drop back to his or her original position to the rear.<sup>5</sup>

Subject to certain exceptions,<sup>6</sup> motorists are ordinarily required by statute to pass to the left and may not drive again to the right side until safely clear of the overtaken vehicle.<sup>7</sup> A passing motorist is generally required to leave a reasonable space between the vehicles when cutting back, and should not cut back so closely to the vehicle being passed as to risk striking it.<sup>8</sup>

Statutes generally require motorists to give way to the right in favor of overtaking motorists so as to allow them free passage on the left.<sup>9</sup> Even if his or her vehicle is slow-moving, though, a motorist is not bound to know at his or her peril that another motorist desires to pass.<sup>10</sup> Where, however, knowledge of the desire of a motorist to the rear to pass is made clear to the motorist ahead, the motorist ahead must yield enough of the way to permit the overtaking motorist to pass, provided it is reasonable and practicable for the latter to do so.<sup>11</sup>

The motorist ahead should not increase his or her speed to prevent the overtaking motorist from passing,<sup>12</sup> or willfully obstruct the passage of the overtaking motorist.<sup>13</sup> Ordinarily, though, the motorist ahead need not slacken his or her speed to permit an overtaking motorist to pass,<sup>14</sup> and need not turn his or her vehicle aside where there is sufficient room for the overtaking motorist to pass.<sup>15</sup>

A motorist has a duty, in overtaking and attempting to pass a bicyclist, to proceed with due care and afford the bicyclist reasonable clearance.<sup>16</sup>

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### Footnotes

- <sup>1</sup> As to passing at intersections or on hills or curves, see §§ 251, 252.
- <sup>2</sup> *Contreras v. Fitzgerald*, 2002 MT 208, 311 Mont. 257, 54 P.3d 983 (2002).
- <sup>3</sup> *Fries v. Berberich*, 177 S.W.2d 640 (Mo. Ct. App. 1944); *Weeks v. South Carolina State Highway Dept.*, 250 S.C. 535, 159 S.E.2d 234 (1968).
- <sup>4</sup> *Devine v. Barton*, 22 S.W.2d 877 (Mo. Ct. App. 1930); *Dreher v. Divine*, 192 N.C. 325, 135 S.E. 29, 47 A.L.R. 696 (1926).
- <sup>5</sup> *Devine v. Barton*, 22 S.W.2d 877 (Mo. Ct. App. 1930).
- <sup>6</sup> § 253.
- <sup>7</sup> *Wright v. Clausen*, 253 Ky. 498, 69 S.W.2d 1062, 104 A.L.R. 480 (1934); *Wilson Storage & Transfer Co. v. Geurkink*, 242 Minn. 60, 64 N.W.2d 9, 48 A.L.R.2d 223 (1954); *Devine v. Barton*, 22 S.W.2d 877 (Mo. Ct. App. 1930).
- <sup>8</sup> *Parker v. Knox*, 147 Me. 396, 87 A.2d 663 (1952); *Losey v. Wetters*, 278 Mich. 422, 270 N.W. 735 (1936); *Hobbs v.*

Mann, 199 N.C. 532, 155 S.E. 163 (1930).

<sup>9</sup> Jones v. Southwest Pump & Machinery Co., 227 Mo. App. 990, 60 S.W.2d 754 (1933).

<sup>10</sup> Southwestern Gas & Elec. Co. v. Brown, 197 F.2d 848 (8th Cir. 1952).

<sup>11</sup> France v. Benter, 256 Iowa 534, 128 N.W.2d 268, 22 A.L.R.3d 313 (1964); Fink v. Lewark, 70 Wyo. 150, 246 P.2d 195 (1952).

<sup>12</sup> Ironside v. Ironside, 1940 OK 351, 188 Okla. 267, 108 P.2d 157, 134 A.L.R. 621 (1940); Oppenheimer v. Linkous' Adm'x, 159 Va. 250, 165 S.E. 385 (1932).

<sup>13</sup> Foster v. Curtis, 213 Mass. 79, 99 N.E. 961 (1912).

<sup>14</sup> Dunkelbeck v. Meyer, 140 Minn. 283, 167 N.W. 1034 (1918); Cowden v. Crippen, 101 Mont. 187, 53 P.2d 98 (1936).

<sup>15</sup> Wright v. Clausen, 253 Ky. 498, 69 S.W.2d 1062, 104 A.L.R. 480 (1934).

<sup>16</sup> Copenhaver v. Tripp, 187 Or. 662, 213 P.2d 450 (1950).

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## 7A Am. Jur. 2d Automobiles § 250

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 5. Portion of Way to Be Used; Following, Approaching, and Passing Other Vehicles

##### b. Passing Other Vehicles

## § 250. Need to give audible signal in passing

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [324](#), [335](#)

### A.L.R. Library

[Automobiles: duty and liability with respect to giving audible signal before passing](#), 22 A.L.R.3d 325

Statutes sometimes require an overtaking motorist wishing to pass a motorist ahead to sound his or her horn or otherwise give reasonable audible warning of his or her approach.<sup>1</sup> Even in the absence of such a statute, the common-law duty to exercise due care in the operation of a vehicle would, in some cases, require the giving of an audible signal when passing.<sup>2</sup>

The requirement to give an audible signal in passing may be excused under certain circumstances, such as when the passing vehicle's presence is made known by the noise it makes<sup>3</sup> or when the driver has given a visual signal with his or her headlights,<sup>4</sup> although there are contrary holdings, both where the passing vehicle was making a great deal of noise,<sup>5</sup> and where the passing motorist has flashed his or her lights as a signal of intention to pass.<sup>6</sup> An audible signal may also be excused where the presence of a passing vehicle is otherwise known to the driver of the forward vehicle,<sup>7</sup> although there is authority to the contrary.<sup>8</sup>

There is support for the view that statutes or ordinances requiring the operator of an overtaking vehicle to give an audible signal of his or her intention to pass, or requiring the operator of the vehicle to be overtaken to give way to the right on an audible signal, or containing both requirements, do not mandate that the horn on the overtaking vehicle be sounded when its

operator intends to pass a vehicle which is already sufficiently to the right.<sup>9</sup>

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#### Footnotes

- <sup>1</sup> Jones v. Southwest Pump & Machinery Co., 227 Mo. App. 990, 60 S.W.2d 754 (1933); Campbell v. W. S. Hatch Co., 622 P.2d 944 (Wyo. 1981).
- <sup>2</sup> Lowe v. Futrell, 271 N.C. 550, 157 S.E.2d 92 (1967); Rieck v. Watt, 53 Or. App. 729, 633 P.2d 31 (1981).
- <sup>3</sup> Globe Indem. Co. v. Cook, 167 So. 115 (La. Ct. App. 2d Cir. 1936).
- <sup>4</sup> Goings v. State Farm Mut. Auto. Ins. Co., 158 So. 2d 333 (La. Ct. App. 1st Cir. 1963), writ refused, 245 La. 729, 160 So. 2d 595 (1964).
- <sup>5</sup> Duncan v. J.H. Corder & Son, 18 Cal. App. 2d 77, 62 P.2d 1387 (2d Dist. 1936); Field v. Webber, 132 Me. 236, 169 A. 732 (1933).
- <sup>6</sup> Goldapp v. Core, 236 Iowa 548, 19 N.W.2d 673 (1945); Emery v. Standard Oil Co., 91 Ohio L. Abs. 193, 188 N.E.2d 175 (Ct. App. 9th Dist. Summit County 1963).
- <sup>7</sup> Muhlhauser v. Archie Campbell Const. Co., 160 N.W.2d 524 (N.D. 1968); Campbell v. W. S. Hatch Co., 622 P.2d 944 (Wyo. 1981).
- <sup>8</sup> McMinn v. Lilly, 215 Miss. 193, 60 So. 2d 603 (1952); Snyder v. Jensen, 281 S.W.2d 802 (Mo. 1955).
- <sup>9</sup> France v. Benter, 256 Iowa 534, 128 N.W.2d 268, 22 A.L.R.3d 313 (1964); Nolan v. Hebrew, 177 Kan. 363, 278 P.2d 1011 (1955); Wesley v. Home Indem. Co., 245 La. 133, 157 So. 2d 467 (1963).

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## 7A Am. Jur. 2d Automobiles § 251

American Jurisprudence, Second Edition | May 2021 Update

### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 5. Portion of Way to Be Used; Following, Approaching, and Passing Other Vehicles

##### b. Passing Other Vehicles

## § 251. Passing at or near intersections

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [324](#), [335](#)

### A.L.R. Library

[Construction, applicability, and effect of traffic regulation prohibiting vehicles from passing one another at street or highway intersection, 53 A.L.R.2d 850](#)

Some statutes or ordinances prohibit motorists from passing other motorists proceeding in the same direction at intersections or within a specified distance of intersections.<sup>1</sup> If a passing motorist is in the passing lane within the specified distance from the intersection, some courts take the view that there is a violation of such a statute, even though he or she begins to pass while outside the statutory distance,<sup>2</sup> but in other cases it has been held that there is no violation of the statute under those circumstances.<sup>3</sup> The proscription against passing another vehicle at an intersection has been regarded as applicable on one-way streets with two or more lanes of traffic.<sup>4</sup>

Generally, where a roadway meets another at an angle, but does not cross it, such as a “T-junction,” there is an intersection within the meaning of such a statute.<sup>5</sup> However, according to some courts, there is no intersection within the meaning of such a statute where the joining road is unimproved and poorly defined,<sup>6</sup> or is a private road or driveway.<sup>7</sup>

One entering an intersection where passing is prohibited is entitled to assume that others will not attempt to pass at the intersection.<sup>8</sup>

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Footnotes

- <sup>1</sup> Davenport v. State of Ariz. ex rel. Industrial Com'n of Ariz., 146 Colo. 401, 361 P.2d 973 (1961) (applying New Mexico law); Davis v. Southern Farm Bureau Cas. Ins. Co., 134 So. 2d 366 (La. Ct. App. 3d Cir. 1961); May v. Warnick, 227 Md. 77, 175 A.2d 413 (1961); Rayborn v. Freeman, 209 So. 2d 193 (Miss. 1968).
- <sup>2</sup> Young v. Blue Line Storage Co., 242 Iowa 125, 44 N.W.2d 391 (1950); Rayborn v. Freeman, 209 So. 2d 193 (Miss. 1968).
- <sup>3</sup> Lemkie v. Boice, 329 Mich. 278, 45 N.W.2d 288 (1951).
- <sup>4</sup> Croeni v. Dysinger, 273 Or. 402, 541 P.2d 457 (1975).
- <sup>5</sup> State v. Bennion, 115 Idaho 181, 765 P.2d 692 (Ct. App. 1988); Reuille v. Bowers, 409 N.E.2d 1144 (Ind. Ct. App. 1980); Ragonese v. Hilferty, 231 Md. 520, 191 A.2d 422 (1963).
- <sup>6</sup> Clark v. Sumner, 72 So. 2d 375 (Fla. 1954); Henry v. Highlands Ins. Co., 315 So. 2d 145 (La. Ct. App. 3d Cir. 1975) (narrow, graveled side road not marked from blacktop highway).
- <sup>7</sup> Davenport v. State of Ariz. ex rel. Industrial Com'n of Ariz., 146 Colo. 401, 361 P.2d 973 (1961) (applying New Mexico Law); Herman v. Muhs, 256 Iowa 38, 126 N.W.2d 400, 7 A.L.R.3d 1199 (1964); Moore v. Armstrong, 1960-NMSC-098, 67 N.M. 350, 355 P.2d 284 (1960).
- <sup>8</sup> Sterling v. Ritchie, 182 So. 2d 735 (La. Ct. App. 1st Cir. 1966); Hall v. McDowell, 6 Wash. App. 941, 497 P.2d 596 (Div. 2 1972).

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## 7A Am. Jur. 2d Automobiles § 252

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 5. Portion of Way to Be Used; Following, Approaching, and Passing Other Vehicles

##### b. Passing Other Vehicles

## § 252. Passing on hills or curves

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [324](#), [335](#)

### A.L.R. Library

[Construction and application of statutes regulating or forbidding passing on hill by vehicle, 60 A.L.R.2d 211](#)

Statutes often prohibit motorists from passing other motorists proceeding in the same direction on a hill, at least insofar as the view of the motorist desiring to pass is obstructed within a specified distance.<sup>1</sup>

Likewise, statutes frequently prohibit a motorist from passing other motorists on a curve where his or her view is obstructed for a specified distance in the direction in which he or she is proceeding.<sup>2</sup> Such a statute makes it unlawful to pass another motorist not only when actually on a curve but also while approaching a curve when there is not a clear view for the specified distance.<sup>3</sup>

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### Footnotes

<sup>1</sup> [Roby v. Ziffrin Truck Lines, Inc., 128 Ind. App. 578, 148 N.E.2d 215 \(1958\)](#); [Vancleave v. Napier, 55 Tenn. App.](#)

313, 399 S.W.2d 784 (1964); *Petcosky v. Bowman*, 197 Va. 240, 89 S.E.2d 4, 60 A.L.R.2d 199 (1955).

<sup>2</sup> *Hopper, McGaw & Co. v. Kelly*, 145 Md. 161, 125 A. 779 (1924); *American Products Co. v. Villwock*, 7 Wash. 2d 246, 109 P.2d 570, 132 A.L.R. 1010 (1941).

<sup>3</sup> *American Products Co. v. Villwock*, 7 Wash. 2d 246, 109 P.2d 570, 132 A.L.R. 1010 (1941).

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## 7A Am. Jur. 2d Automobiles § 253

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

##### 5. Portion of Way to Be Used; Following, Approaching, and Passing Other Vehicles

##### b. Passing Other Vehicles

## § 253. Passing on right

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [324](#), [335](#)

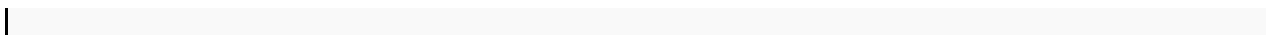
### A.L.R. Library

[Reciprocal rights, duties, and liabilities where driver of motor vehicle attempts to pass on right of other motor vehicle proceeding in same direction, 38 A.L.R.2d 114](#)

The ordinary traffic regulation requiring motorists to pass other motorists proceeding in the same direction on the left<sup>1</sup> is violated where a motorist passes another motorist on the right.<sup>2</sup> However, a motorist, in the exercise of ordinary care, may, despite such a regulation, be permitted to pass another motorist going in the same direction on the right when the forward motorist has given a clear signal of his or her intention to make a left turn and there is sufficient space to the right to permit the overtaking motorist to pass in safety.<sup>3</sup> Indeed, statutes have been enacted in some jurisdictions that allow passing on the right under specified circumstances.<sup>4</sup>

### Observation:

In those situations where passing on the right is permitted, a statute requiring the giving of an audible warning before passing or attempting to pass a vehicle on the left is inapplicable to a vehicle passing on the right.<sup>5</sup>



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#### Footnotes

- <sup>1</sup> § 249.
- <sup>2</sup> *Com. v. Wituszynski*, 567 Pa. 49, 784 A.2d 1284 (2001).
- <sup>3</sup> *Ward v. Cruse*, 236 N.C. 400, 72 S.E.2d 835, 38 A.L.R.2d 109 (1952).
- <sup>4</sup> *Ruff v. Federal Tea Co.*, 129 Conn. 455, 29 A.2d 441 (1942); *People v. Yard*, 147 Misc. 2d 609, 558 N.Y.S.2d 822 (Sup 1990); *Ludwick v. Doe*, 914 S.W.2d 522 (Tenn. Ct. App. 1995).
- <sup>5</sup> *Bode v. Buchman*, 68 Wis. 2d 276, 228 N.W.2d 718 (1975).

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## 7A Am. Jur. 2d Automobiles § 254

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

#### 5. Portion of Way to Be Used; Following, Approaching, and Passing Other Vehicles

##### c. Approaching Other Vehicles Proceeding in Opposite Direction

## § 254. Approaching other vehicles proceeding in opposite direction, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [324](#), [335](#)

Statutes or ordinances generally require motorists proceeding in opposite directions on a single-lane road to pass each other to their right,<sup>1</sup> unless the condition of the road prevents them from doing so.<sup>2</sup>

A motorcycle is a vehicle within the meaning of a statute requiring vehicles proceeding in opposite directions to yield, to the other, one-half of the road.<sup>3</sup>

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### Footnotes

<sup>1</sup> [Langner v. Caviness](#), 238 Iowa 774, 28 N.W.2d 421, 172 A.L.R. 1135 (1947); [M. K. & O. Airline Transit Co. v. Deckard](#), 1964 OK 261, 397 P.2d 883, 12 A.L.R.3d 466 (Okla. 1964); [O'Mally v. Eagan](#), 43 Wyo. 233, 2 P.2d 1063, 77 A.L.R. 582 (1931).

<sup>2</sup> [Glas v. Ahlers](#), 236 A.D. 379, 259 N.Y.S. 399 (4th Dep't 1932).

<sup>3</sup> [Wilson v. Bittner](#), 129 Or. 122, 276 P. 268, 64 A.L.R. 132 (1929).



## 7A Am. Jur. 2d Automobiles § 255

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### A. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration, in General

#### 5. Portion of Way to Be Used; Following, Approaching, and Passing Other Vehicles

##### c. Approaching Other Vehicles Proceeding in Opposite Direction

## § 255. Duty to dim headlights

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(2\)](#), [5\(5\)](#), [6](#), [7](#), [10](#), [11](#), [117](#), [324](#), [328](#), [335](#)

### A.L.R. Library

[Liability or recovery in automobile negligence action as affected by motor vehicle's being driven or parked without dimming lights, 63 A.L.R.3d 824](#)

Statutes requiring motor vehicles to be equipped with headlights that permit the beam to be dimmed on meeting another vehicle proceeding in the opposite direction<sup>1</sup> have been regarded as imposing a duty on a motorist to dim his or her headlights when necessary to avoid injury to others.<sup>2</sup> Some statutes expressly impose that duty on approaching another motorist, or within a specified distance of an approaching motorist.<sup>3</sup> However, it has been held that a statute governing the use of multiple-beam headlights while approaching an oncoming vehicle is not applicable to the use of high beam flashes, during the middle of the day, to warn oncoming motorists of the presence of police.<sup>4</sup>

A statute requiring a motorist, whenever another motorist is within a specified distance, to operate the headlights of his or her vehicle so that dazzling light does not interfere with the approaching motorist, has been construed to be constitutional as against the objection that it is indefinite, unclear, and does not give an unequivocal warning of the rule to be obeyed.<sup>5</sup>

Footnotes

<sup>1</sup> § 207.

<sup>2</sup> *Whatley v. Henry*, 65 Ga. App. 668, 16 S.E.2d 214 (1941); *Hernandez v. State*, 13 S.W.3d 492 (Tex. App. Amarillo 2000), petition for discretionary review granted (1 pet.), (Sept. 20, 2000) and judgment rev'd on other grounds, 60 S.W.3d 106 (Tex. Crim. App. 2001).

<sup>3</sup> *State v. Mussell*, 257 Ga. App. 533, 571 S.E.2d 518 (2002); *State v. Kimball*, 141 Idaho 489, 111 P.3d 625 (Ct. App. 2005); *Greyhound Corp. v. Hounshell*, 351 S.W.2d 64 (Ky. 1961).

<sup>4</sup> *Com. v. Beachey*, 556 Pa. 345, 728 A.2d 912 (1999).

<sup>5</sup> *People v. Meola*, 7 N.Y.2d 391, 198 N.Y.S.2d 276, 165 N.E.2d 851 (1960) (stating that phrase “dazzling light” manifestly refers to use of high headlight beams).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### B. Offenses Regarding Licensing and Registration

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  5(1), 6, 7, 10, 11, 21 to 57, 65 to 145, 324, 326

### A.L.R. Library

A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Driver's Licenses

A.L.R. Index, Highways and Streets


A.L.R. Index, License Plates

A.L.R. Index, Motor Vehicles

A.L.R. Index, Registration

A.L.R. Index, Revocation and Suspension

A.L.R. Index, Traffic Offenses and Violations

West's A.L.R. Digest, [Automobiles](#)  5(1), 6, 7, 10, 11, 21 to 57, 65 to 145, 324, 326

## 7A Am. Jur. 2d Automobiles § 256

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### B. Offenses Regarding Licensing and Registration

##### 1. Motor Vehicle Licensing and Registration

## § 256. Motor vehicle licensing and registration, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [6](#), [7](#), [10](#), [11](#), [21](#) to [57](#), [65](#) to [145](#), [324](#), [326](#)

### A.L.R. Library

[What constitutes farm vehicle, construction equipment, or vehicle temporarily on highway exempt from registration as motor vehicle, 27 A.L.R.4th 843](#)

Statutes requiring persons to obtain a driver's license and register an automobile with the state fall within the scope of the state's police power,<sup>1</sup> and do not implicate a motorist's constitutional right to travel.<sup>2</sup>

The operation of a motor vehicle that is not properly licensed or registered in accordance with applicable regulations is generally a criminal offense.<sup>3</sup> To establish criminal liability for operating a motor vehicle with suspended/revoked registration, a state may have to prove the element of knowledge to satisfy due process requirements, as where the operator of the vehicle is not its owner and the registration certificate affixed to the windshield has not expired.<sup>4</sup> However, exceptions to such requirement may be made for certain vehicles, and the individuals operating those vehicles, such as farm tractors,<sup>5</sup> covered farm vehicles,<sup>6</sup> and all-terrain vehicles<sup>7</sup> to the extent not used on public highways. A state resident can be found to violate such a registration requirement even if his or her vehicle is not operated within the state.<sup>8</sup>

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### Footnotes

- <sup>1</sup> State v. Wilder, 138 Idaho 644, 67 P.3d 839 (Ct. App. 2003); City of Billings v. Beckman, 2002 MT 256, 313 Mont. 420, 63 P.3d 512 (2002); State v. Booher, 978 S.W.2d 953 (Tenn. Crim. App. 1997).
- <sup>2</sup> State v. Elaban, 105 Haw. 361, 97 P.3d 1013 (2004), unpublished/noncitable; State v. Booher, 978 S.W.2d 953 (Tenn. Crim. App. 1997).
- <sup>3</sup> State v. Crisman, 123 Idaho 277, 846 P.2d 928 (Ct. App. 1992); State v. David, 287 N.J. Super. 434, 671 A.2d 195 (App. Div. 1996); People v. Pette, 158 Misc. 2d 434, 601 N.Y.S.2d 251 (Dist. Ct. 1993); State v. French, 509 N.W.2d 693 (S.D. 1993).
- <sup>4</sup> People v. Dumas, 42 Misc. 3d 265, 974 N.Y.S.2d 921 (N.Y. City Ct. 2013).
- <sup>5</sup> Ryan v. Pennsylvania Life Ins. Co., 123 S.W.3d 142 (Ky. 2003), as modified, (Jan. 28, 2004); People v. Canute, 8 A.D.3d 1125, 778 N.Y.S.2d 247 (4th Dep't 2004); Nationwide Mut. Ins. Companies v. Lagodinski, 2004 ND 147, 683 N.W.2d 903 (N.D. 2004).
- <sup>6</sup> 49 U.S.C.A. § 31136 provides that a covered farm vehicle, including the individual operating that vehicle, will be exempt from certain federal licensing and other statutory requirements, and also provides that federal transportation funding to a state may not be terminated, limited, or otherwise interfered with as a result of the state exempting a covered farm vehicle, including the individual operating that vehicle, from any state requirement relating to the operation of that vehicle. This exemption does not apply with respect to a covered farm vehicle transporting hazardous materials that require a placard.
- <sup>7</sup> Stevens v. State, 135 P.3d 688 (Alaska Ct. App. 2006); MacLean v. Hingham Mut. Fire Ins. Co., 51 Mass. App. Ct. 870, 750 N.E.2d 494 (2001).
- <sup>8</sup> Durnil v. Snyder, 2002 WL 194252 (Cal. App. 4th Dist. 2002), unpublished/noncitable; Guraj v. Connecticut Indem. Ins. Co., 2006 WL 448688 (Mich. Ct. App. 2006).

## 7A Am. Jur. 2d Automobiles § 257

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### B. Offenses Regarding Licensing and Registration

##### 1. Motor Vehicle Licensing and Registration

## § 257. Effect of false statements in application for vehicle registration

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [6](#), [7](#), [10](#), [11](#), [56](#), [107](#), [145](#), [324](#), [326](#)

Generally, knowingly making a false statement in an application for the registration of a motor vehicle is a criminal offense.<sup>1</sup> However, a violation of such a requirement has not been found where a woman merely misstated her age in her application for a registration, there being no doubt that she was over the age of 21.<sup>2</sup>

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### Footnotes

<sup>1</sup> [State v. James](#), 543 So. 2d 288 (Fla. 3d DCA 1989); [People v. Macuski](#), 284 A.D. 902, 134 N.Y.S.2d 390 (2d Dep't 1954); [State v. French](#), 509 N.W.2d 693 (S.D. 1993).

<sup>2</sup> [People v. Nicholson](#), 205 Misc. 1081, 132 N.Y.S.2d 917 (Spec. Sess. 1954).

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## 7A Am. Jur. 2d Automobiles § 258

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### B. Offenses Regarding Licensing and Registration

##### 1. Motor Vehicle Licensing and Registration

## § 258. Need to display license plates

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  5(1), 6, 7, 10, 11, 29, 41, 107, 324, 326

### A.L.R. Library

[Validity, Construction, and Operation of State Statutes Regulating Issuance of Special or Vanity License Plates](#), 8 A.L.R.6th 639

The operation of a motor vehicle on public highways without validly numbered and registered license plates attached to the vehicle ordinarily constitutes a criminal offense,<sup>1</sup> and the requirement that license plates be properly validated and registered may apply to nonresidents and out-of-state visitors as well as state residents.<sup>2</sup> Statutes often require license plates to be displayed on both the front and rear of a vehicle.<sup>3</sup>

Statutes commonly prohibit the display of license plates on a motor vehicle other than the one for which they are issued, and prescribe punishment for the violation thereof.<sup>4</sup>

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### Footnotes

<sup>1</sup> [Jones v. City of Little Rock](#), 314 Ark. 383, 862 S.W.2d 273 (1993); [State v. Jim](#), 111 Haw. 16, 136 P.3d 904 (2006), unpublished/noncitable; [State v. Griffin](#), 183 Wis. 2d 327, 515 N.W.2d 535 (Ct. App. 1994).

<sup>2</sup> [Christian v. State](#), 329 Ga. App. 244, 764 S.E.2d 573 (2014).

<sup>3</sup> [U.S. v. Flores-Sandoval](#), 366 F.3d 961 (8th Cir. 2004) (applying Nebraska law); [State v. Lacasella](#), 2002 MT 326, 313 Mont. 185, 60 P.3d 975 (2002).

A license plate displayed on the inside of the rear window of a vehicle was not displayed “upon rear of vehicle,” as required by a statute governing the display of license plates. [Merritt v. State](#), 829 N.E.2d 472 (Ind. 2005).

<sup>4</sup> [Morgan v. Termine](#), 2 Misc. 2d 109, 149 N.Y.S.2d 42 (Sup 1956).

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## 7A Am. Jur. 2d Automobiles § 259

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### B. Offenses Regarding Licensing and Registration

##### 1. Motor Vehicle Licensing and Registration

## § 259. Need for legibility and visibility of license plates

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [6](#), [7](#), [10](#), [11](#), [29](#), [41](#), [107](#), [324](#), [326](#)

### A.L.R. Library

[Validity and construction of statute making it a criminal offense to "tamper" with motor vehicle or contents, or to obscure registration plates](#), 57 A.L.R.3d 606

Statutes often require that license plates be legible and visible,<sup>1</sup> and this requirement includes not just the plates themselves but renewal stickers thereon,<sup>2</sup> and applies to temporary plates.<sup>3</sup> A state statute requiring that a license plate be kept legible has been regarded as properly applied to an out-of-state license plate.<sup>4</sup>

The covering up or obliteration of all or part of a license plate in violation of a statute is usually a punishable offense,<sup>5</sup> which may be committed even in the case of an out-of-state license plate.<sup>6</sup> Such a prohibition, for example, may apply to the covering up of the state name by a license plate holder,<sup>7</sup> or the obstruction of the plate by a towing ball, notwithstanding that such car equipment otherwise is ordinary and legal.<sup>8</sup> However, there are circumstances under which a state cannot, consistent with the First Amendment, enforce criminal sanctions against the obscuring of a state motto,<sup>9</sup> or image displayed on a license plate issued by the state.<sup>10</sup>

## CUMULATIVE SUPPLEMENT

**Cases:**

Traffic stop of defendant's vehicle, which pulled off the highway immediately after passing a sign notifying drivers of an upcoming State Patrol checkpoint, was justified by reasonable suspicion, where in-transit tag on vehicle was located on the rear bumper and included red handwriting, and tag was affixed inside a license plate frame that partially obstructed the information on the top and bottom of the tag, preventing officer from being able to read the state of issuance. [U.S. Const. Amend. 4](#); [Neb. Rev. Stat. § 60-376](#). [State v. Barbeau](#), 301 Neb. 293, 917 N.W.2d 913 (2018).

State trooper had probable cause to believe that defendant had committed traffic violation of failing to have an illuminated rear license plate, justifying traffic stop, although stop was less than 30 minutes after sunset; trooper testified that it was full dark at the time of the stop, that he, defendant, and passing vehicles had their headlights on, and that he turned his squad car's lights off briefly to check defendant's license plate light and observed that it did not illuminate the plate. [U.S. Const. Amend. 4](#); [N.Y. Const. art. 1, § 12](#); [N.Y. Vehicle and Traffic Law §§ 375\(2\)\(a\), 375\(2\)\(a\)\(4\)](#). [People v. Blandford](#), 190 A.D.3d 1033, 138 N.Y.S.3d 710 (3d Dep't 2021).

**[END OF SUPPLEMENT]**

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**Footnotes**

- <sup>1</sup> [State v. Hill](#), 131 N.M. 195, 2001-NMCA-094, 34 P.3d 139 (Ct. App. 2001); [Wilmington v. Conner](#), 144 Ohio App. 3d 735, 761 N.E.2d 663 (12th Dist. Clinton County 2001).
- <sup>2</sup> [Davis v. Novy](#), 433 F.3d 926 (7th Cir. 2006) (applying Illinois law); [State v. Hill](#), 131 N.M. 195, 2001-NMCA-094, 34 P.3d 139 (Ct. App. 2001).
- <sup>3</sup> [U.S. v. Dexter](#), 165 F.3d 1120 (7th Cir. 1999) (applying Wisconsin law).
- <sup>4</sup> [U.S. v. DeGasso](#), 369 F.3d 1139 (10th Cir. 2004) (applying Oklahoma law); [State v. Davis](#), 283 Ga. App. 200, 641 S.E.2d 205 (2007).
- <sup>5</sup> [People v. White](#), 93 Cal. App. 4th 1022, 113 Cal. Rptr. 2d 584 (4th Dist. 2001) (rear license plate partially obscured by trailer hitch ball); [State v. Reiter](#), 3 Neb. App. 153, 524 N.W.2d 575 (1994); [State v. Robinson](#), 2005-Ohio-2834, 2005 WL 1364900 (Ohio Ct. App. 8th Dist. Cuyahoga County 2005); [State v. Johnson](#), 219 S.W.3d 386 (Tex. Crim. App. 2007).
- <sup>6</sup> [State v. Davis](#), 283 Ga. App. 200, 641 S.E.2d 205 (2007).
- <sup>7</sup> [People v. Newman](#), 96 A.D.3d 34, 942 N.Y.S.2d 93 (1st Dep't 2012); [McFadden v. State](#), 283 S.W.3d 14 (Tex. App. San Antonio 2009).
- <sup>8</sup> [People v. Dunbar](#), 499 Mich. 60, 879 N.W.2d 229 (2016), cert. denied, 137 S. Ct. 161, 196 L. Ed. 2d 122 (2016).
- <sup>9</sup> [Wooley v. Maynard](#), 430 U.S. 705, 97 S. Ct. 1428, 51 L. Ed. 2d 752 (1977) (obscuring of New Hampshire motto "Live Free or Die," on moral or religious grounds).
- <sup>10</sup> [Cressman v. Thompson](#), 798 F.3d 938 (10th Cir. 2015) (image of Native American shooting arrow on Oklahoma's standard vehicle license plate communicated a message that qualified the image as symbolic speech, such that government could not compel citizen who disagreed with that particular message to display image).



## 7A Am. Jur. 2d Automobiles § 260

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### B. Offenses Regarding Licensing and Registration

##### 2. Drivers' Licenses

## § 260. Drivers' licenses, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [6](#), [7](#), [10](#), [11](#), [135](#) to [145](#), [324](#), [326](#)

### A.L.R. Library

[Validity of Routine Roadblocks by State or Local Police for Purpose of Discovery of Driver's License, Registration, and Safety Violations](#), 116 A.L.R.5th 479

A license to operate a motor vehicle is not a right but a privilege subject to reasonable regulations,<sup>1</sup> and that privilege may be revoked or suspended for cause.<sup>2</sup> A violation of any of the various regulations relating to drivers' and chauffeurs' licenses is generally made a criminal offense by statute. For example, the making of false statements in an application for such a license,<sup>3</sup> the possession of a license bearing a false name, address, and date of birth,<sup>4</sup> the driving of a motor vehicle without being licensed,<sup>5</sup> the failure to display a driver's license upon a proper demand therefor,<sup>6</sup> and driving during a period when one's license is suspended or revoked<sup>7</sup> are usually regarded as criminal offenses.

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### Footnotes

<sup>1</sup> [State v. Cifelli](#), 214 Ariz. 524, 155 P.3d 363 (Ct. App. Div. 1 2007); [State v. Becker](#), 36 Kan. App. 2d 828, 145 P.3d 938 (2006); [Com. v. Spease](#), 2006 PA Super 323, 911 A.2d 952 (2006); [Ex parte Drake](#), 212 S.W.3d 822 (Tex. App. Austin 2006), petition for discretionary review refused, (Apr. 18, 2007).

<sup>2</sup> Boone v. State, 256 Ga. App. 220, 568 S.E.2d 91 (2002); Nelson v. Driscoll, 1999 MT 193, 295 Mont. 363, 983 P.2d 972 (1999); Walton v. Com., 255 Va. 422, 497 S.E.2d 869 (1998).

<sup>3</sup> Halko v. State, 58 Del. 383, 209 A.2d 895 (1965); Ogilvie v. State, 711 S.W.2d 365 (Tex. App. Dallas 1986), petition for discretionary review refused, (May 20, 1987).

<sup>4</sup> State v. Farkas, 64 Ohio App. 3d 224, 580 N.E.2d 1154 (8th Dist. Cuyahoga County 1989).

<sup>5</sup> § 261.

<sup>6</sup> § 261.

<sup>7</sup> § 262.

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## 7A Am. Jur. 2d Automobiles § 261

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### B. Offenses Regarding Licensing and Registration

##### 2. Drivers' Licenses

## § 261. Driving without, or failure to display, license

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [6](#), [7](#), [10](#), [11](#), [136](#), [144.2\(9.6\)](#), [145](#), [324](#), [326](#)

### A.L.R. Library

[Validity and construction of statute making it a criminal offense for the operator of a motor vehicle not to carry or display his operator's license or the vehicle registration certificate](#), 6 A.L.R.3d 506

Operating a motor vehicle without a driver's license is commonly made a criminal offense,<sup>1</sup> and a statute so providing does not violate a motorist's constitutional freedom of travel.<sup>2</sup> Likewise, it is unlawful in many jurisdictions to drive in violation of restrictions officially imposed on a driver's license.<sup>3</sup> There are also state statutory provisions requiring motorists to display their drivers' licenses on the demand of a police officer or other person authorized to make such demand,<sup>4</sup> and criminal liability often results from noncompliance with such provisions.<sup>5</sup>

### Distinction:

The view has been taken that a person does not commit the offense of driving without a valid license by driving under a suspended license; rather, driving without a valid license refers to those who have never had a license or have an expired license.<sup>6</sup>



Some statutes provide, in effect, that the failure of an operator to display his or her license on the demand of an officer or other proper person constitutes presumptive or prima facie evidence that the operator has no license.<sup>7</sup> However, this presumption is rebuttable.<sup>8</sup>

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#### Footnotes

- <sup>1</sup> Jones v. City of Little Rock, 314 Ark. 383, 862 S.W.2d 273 (1993); State v. Crisman, 123 Idaho 277, 846 P.2d 928 (Ct. App. 1992); State v. Donkers, 170 Ohio App. 3d 509, 2007-Ohio-1557, 867 N.E.2d 903 (11th Dist. Portage County 2007); Schmitt v. State, 825 S.W.2d 549 (Tex. App. Beaumont 1992).
- <sup>2</sup> Wos v. Sheahan, 57 Fed. Appx. 694 (7th Cir. 2002); Ramey v. State, 2002 WL 1163431 (Tex. App. Houston 14th Dist. 2002), petition for discretionary review refused, (Apr. 9, 2003).
- <sup>3</sup> State v. Rhode, 628 N.W.2d 617 (Minn. Ct. App. 2001).
- <sup>4</sup> § 107.
- <sup>5</sup> Com. v. Sullivan, 311 Mass. 177, 40 N.E.2d 261 (1942); State v. Mendonca, 134 Or. App. 290, 894 P.2d 1247 (1995).
- <sup>6</sup> State v. Bowie, 268 Kan. 794, 999 P.2d 947 (2000); State v. Donkers, 170 Ohio App. 3d 509, 2007-Ohio-1557, 867 N.E.2d 903 (11th Dist. Portage County 2007).
- <sup>7</sup> State v. Green, 13 Ohio Misc. 2d 14, 462 N.E.2d 466 (County Ct. 1984).
- <sup>8</sup> People v. Goodenough, 89 Misc. 2d 455, 391 N.Y.S.2d 940 (J. Ct. 1977).

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## 7A Am. Jur. 2d Automobiles § 262

American Jurisprudence, Second Edition | May 2021 Update

### Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

## V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

### B. Offenses Regarding Licensing and Registration

#### 2. Drivers' Licenses

## § 262. Driving while license is suspended or revoked

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [6](#), [7](#), [10](#), [11](#), [144.1](#) to [145](#), [324](#), [326](#)

Statutes generally make it a criminal offense to operate a motor vehicle while one's driver's license is suspended or revoked,<sup>1</sup> and a municipal ordinance not inconsistent with state law may do the same.<sup>2</sup> Such a statute does not violate a defendant's right to freedom of travel,<sup>3</sup> and may be applied to one who drives a moped<sup>4</sup> or a snowmobile<sup>5</sup> on a public way while his or her driver's license is suspended or revoked. The offense of driving under a revoked license may be committed even if the motorist's vehicle is not actually moving, if the motorist is sitting in it with the ignition turned on.<sup>6</sup>

One may be found guilty of violating a state statute by operating a motor vehicle while his or her state driver's license is suspended even though his or her act of driving in the state is performed after he or she has moved to another state<sup>7</sup> or country<sup>8</sup> and has obtained a driver's license there and has that license in his or her possession at the time of the act in question.

### Practice Tip:

Lack of knowledge<sup>9</sup> or notice<sup>10</sup> of the suspension or revocation is a valid defense in a prosecution for violation of such a statute, where the statute requires such knowledge or notice, although it is usually sufficient if the motorist should have known of the suspension or revocation, actual knowledge thereof being unnecessary.<sup>11</sup> Where a driver has been adjudged a habitual traffic violator, the driver's conviction for operating a vehicle does not require proof that he or she knew that his or her driving privileges were suspended because of a habitual traffic violator determination, but requires only proof that the person operated a vehicle with knowledge that the person's driving privileges were suspended, regardless of the reason.<sup>12</sup> It may also be a valid defense that the motorist was operating the vehicle pursuant to a work permit.<sup>13</sup>

The second revocation of a driver's license may be effective as a statutory aggravating factor for the offense of driving while one's license is revoked, notwithstanding that the driver's license was never reinstated following the first revocation.<sup>14</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Department of Highway Safety and Motor Vehicles' (DHSMV) provision of notice that driver's license was revoked is neither an element of nor an affirmative defense to the criminal offense of driving while license revoked as a habitual traffic offender (HTO); receding from *Patterson v. State*, 938 So. 2d 625; *State v. James*, 928 So. 2d 1269; *Kirschner v. State*, 915 So. 2d 624; *State v. Fields*, 809 So. 2d 99. Fla. Stat. Ann. § 322.34(5). *Robinson v. State*, 290 So. 3d 1007 (Fla. 2d DCA 2020), review granted, 2020 WL 2735445 (Fla. 2020).

Defendant's allegations that he was never issued driver's license were not un rebutted, and thus defendant was not entitled to dismissal of charge of driving while license was revoked; defendant's driving record indicated that he passed licensing exam and was issued Class E license, and additional entries indicated that defendant's license had been revoked and listed him as habitual traffic offender. Fla. R. Crim. P. 3.190(c). *State v. Randolph*, 287 So. 3d 686 (Fla. 5th DCA 2019).

Evidence was insufficient to convict defendant of driving while license permanently revoked; defendant's expired learner's permit was not a driver's license, nor did it provide a driving privilege that could have been permanently revoked. Fla. Stat. Ann. § 322.341. *Hayes v. State*, 279 So. 3d 744 (Fla. 5th DCA 2019).

Defendant could not be prosecuted under statute prohibiting a "person whose driver license or driving privilege has been canceled, suspended, or revoked" and who knows of such cancellation, suspension, or revocation from driving while such license or privilege is canceled, suspended, or revoked, where statute expressly stated that it did not apply to habitual traffic offenders, and it was not disputed that defendant, who had at least 11 prior convictions for driving while his driving privilege was suspended or revoked and two for driving under the influence (DUI), was a habitual traffic offender. Fla. Stat. Ann. §§ 322.34(2)(c), 322.264. *Finney v. State*, 219 So. 3d 254 (Fla. 1st DCA 2017).

A conviction under the statute governing the crime of driving after forfeiture of license requires a showing that the defendant had actual notice that he no longer had the privilege to drive in the Commonwealth when the offense occurred, but the governing statute does not require any particular form of notice and does not mandate any degree of specificity for such notice. Va. Code Ann. § 18.2-272(A). *Yoder v. Commonwealth*, 835 S.E.2d 897 (Va. 2019).

Testimony from witness whose vehicle was rear-ended by that of defendant was not so manifestly false that reasonable men ought not believe it, and thus supported daughter defendant's conviction for driving while on a suspended license; circuit court was impressed with witness's statement about what occurred and gave great weight to his account of the accident, found that witness was not in shock after the accident, that he did not have some hidden motive, and that there was nothing in his cross-examination that attacked or took away from his credibility, and found that the testimony of witness was consistent with the statements given by mother defendant and daughter defendant to law-enforcement officer. *Gerald v. Commonwealth*, 295 Va. 469, 813 S.E.2d 722 (2018).

## [END OF SUPPLEMENT]

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### Footnotes

<sup>1</sup> *U.S. v. White*, 145 Fed. Appx. 786 (3d Cir. 2005) (applying Pennsylvania law); *Stevens v. State*, 135 P.3d 688 (Alaska

Ct. App. 2006); *Galston v. State*, 943 So. 2d 968 (Fla. 5th DCA 2006); *People v. Lucas*, 372 Ill. App. 3d 279, 310 Ill. Dec. 96, 865 N.E.2d 420 (3d Dist. 2007), judgment aff'd in part, rev'd in part on other grounds, 231 Ill. 2d 169, 325 Ill. Dec. 239, 897 N.E.2d 778 (2008); *People v. Campbell*, 36 A.D.3d 1016, 827 N.Y.S.2d 768 (3d Dep't 2007).

<sup>2</sup> *Lampley v. Municipality of Anchorage*, 159 P.3d 515 (Alaska Ct. App. 2007).

<sup>3</sup> *State v. Stuber*, 2002-Ohio-3394, 2002 WL 1433852 (Ohio Ct. App. 3d Dist. Allen County 2002).

<sup>4</sup> *State v. Meister*, 849 So. 2d 1127 (Fla. 4th DCA 2003); *Saunders v. Com.*, 48 Va. App. 196, 629 S.E.2d 701 (2006).

<sup>5</sup> *State v. Snyder*, 634 N.W.2d 613 (Iowa 2001).

<sup>6</sup> *People v. Gregor*, 26 P.3d 530 (Colo. App. 2000); *State v. Portsche*, 261 Neb. 160, 622 N.W.2d 582 (2001).

<sup>7</sup> *State v. Jacobson*, 31 Conn. App. 797, 627 A.2d 474 (1993), judgment aff'd, 229 Conn. 824, 644 A.2d 331 (1994); *Stripling v. State*, 279 Ga. App. 856, 632 S.E.2d 747 (2006).

<sup>8</sup> *People v. Platts*, 274 Ill. App. 3d 753, 211 Ill. Dec. 397, 655 N.E.2d 300 (2d Dist. 1995) (prosecution of Canadian citizen who had valid Canadian driver's license).

<sup>9</sup> *Quest v. State*, 837 So. 2d 1106 (Fla. 4th DCA 2003); *State v. Lewis*, 263 Kan. 843, 953 P.2d 1016 (1998); *State v. Watkins*, 148 N.H. 760, 813 A.2d 435 (2002).

<sup>10</sup> *Patterson v. State*, 938 So. 2d 625 (Fla. 2d DCA 2006); *Sledge v. State*, 312 Ga. App. 97, 717 S.E.2d 682 (2011); *State v. Gauntt*, 154 N.H. 204, 908 A.2d 771 (2006); *City of Jamestown v. Neumiller*, 2000 ND 11, 604 N.W.2d 441 (N.D. 2000).

The state's failure to show that its department of transportation had mailed a notice of driver's license suspension to the motorist precluded his conviction for driving under suspension. *State v. Green*, 722 N.W.2d 650 (Iowa 2006).

<sup>11</sup> *State v. Cifelli*, 214 Ariz. 524, 155 P.3d 363 (Ct. App. Div. 1 2007); *Stewart v. State*, 721 N.E.2d 876 (Ind. 1999); *People v. Abelo*, 14 Misc. 3d 818, 831 N.Y.S.2d 838 (Sup 2006).

<sup>12</sup> *State v. Jackson*, 889 N.E.2d 819 (Ind. 2008).  
Regarding habitual traffic violator offenses, see §§ 144 to 146.

<sup>13</sup> *State v. Valinski*, 254 Conn. 107, 756 A.2d 1250 (2000).

<sup>14</sup> *People v. Owens*, 405 Ill. Dec. 894, 59 N.E.3d 187 (App. Ct. 4th Dist. 2016), appeal denied, 408 Ill. Dec. 369, 65 N.E.3d 845 (Ill. 2016).

## 7A Am. Jur. 2d Automobiles § 263

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### B. Offenses Regarding Licensing and Registration

##### 2. Drivers' Licenses

## § 263. Driving while license is suspended or revoked—Necessity or emergency as defense

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [6](#), [7](#), [10](#), [11](#), [144.1](#) to [144.2\(13\)](#), [145](#), [324](#), [326](#)

### A.L.R. Library

[Automobiles: necessity or emergency as defense in prosecution for driving without operator's license or while license is suspended, 7 A.L.R.5th 73](#)

A number of courts have recognized that the violation of a statute penalizing driving while one's license is suspended or revoked may, under certain circumstances, be excused or justified when the defendant has a necessity or emergency defense.<sup>1</sup> However, in most decisions, the courts have, under the facts and circumstances involved in the particular case, rejected such defense.<sup>2</sup>

The view has been taken that the operation of a vehicle at the specific direction of an arresting police officer cannot be made the basis of a conviction for driving while the operator's license was suspended.<sup>3</sup>

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### Footnotes

<sup>1</sup> [Greenwood v. State, 237 P.3d 1018 \(Alaska 2010\)](#) (DUI defendant presented evidence that she feared that if she did not drive, though intoxicated, her former boyfriend would physically harm her, and would burn down her camper and

his parents' house); *People v. Weiser*, 789 P.2d 454 (Colo. App. 1989); *Tarvestad v. State*, 261 Ga. 605, 409 S.E.2d 513 (1991); *City of Bismarck v. Lembke*, 540 N.W.2d 155 (N.D. 1995); *State v. Cole*, 304 S.C. 47, 403 S.E.2d 117, 7 A.L.R.5th 998 (1991); *State v. Callahan*, 155 Vt. 571, 587 A.2d 970 (1991).

<sup>2</sup> *Shrum v. State*, 664 N.E.2d 1180 (Ind. Ct. App. 1996); *State v. Harrison*, 473 N.W.2d 242 (Iowa Ct. App. 1991); *State v. Moore*, 577 A.2d 348 (Me. 1990); *City of Bismarck v. Lembke*, 540 N.W.2d 155 (N.D. 1995); *State v. Callahan*, 155 Vt. 571, 587 A.2d 970 (1991).

<sup>3</sup> *State v. Ragland*, 4 Conn. Cir. Ct. 424, 233 A.2d 698 (App. Div. 1967).

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## 7A Am. Jur. 2d Automobiles § 264

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### B. Offenses Regarding Licensing and Registration

##### 2. Drivers' Licenses

## § 264. Permitting unlicensed person to drive

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [6](#), [7](#), [10](#), [11](#), [136](#), [145](#), [324](#), [326](#)

### A.L.R. Library

[Construction, application, and effect of legislation making it an offense to permit, or imputing negligence to one who permits, an unauthorized or unlicensed person to operate motor vehicle, 69 A.L.R.2d 978](#)

Statutes sometimes make it a criminal offense for a person to authorize or permit the operation of a motor vehicle owned by him or her or in his or her charge by a person who does not have a driver's license or a learner's permit.<sup>1</sup> Such statutes represent valid exercises of the police power,<sup>2</sup> having been enacted for the protection of the public.<sup>3</sup>

Under some such statutes, one cannot be convicted for the violation thereof in the absence of a showing that he or she had knowledge that the driver was not licensed, or had knowledge of facts from which such knowledge could reasonably be inferred,<sup>4</sup> but under other such statutes a conviction can be had even in the absence of a showing that the defendant knew the person allowed to operate the vehicle was unlicensed.<sup>5</sup> In any event, there is agreement that there can be no violation of such a statute unless it is shown that permission was granted to take the vehicle.<sup>6</sup>

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#### Footnotes

<sup>1</sup> [Commonwealth v. Sabeau](#), 275 Mass. 546, 176 N.E. 523 (1931); [State v. King](#), 63 Ohio Misc. 2d 190, 620 N.E.2d 306 (Mun. Ct. 1993).

<sup>2</sup> [Dinger v. Burnham](#), 360 Mo. 465, 228 S.W.2d 696 (1950).

<sup>3</sup> [Smith v. Thomas](#), 126 Ind. App. 59, 130 N.E.2d 85 (1955); [Bowdler v. St. Johnsbury Trucking Co.](#), 88 N.H. 331, 189 A. 353 (1937).

<sup>4</sup> [Commonwealth v. Sabeau](#), 275 Mass. 546, 176 N.E. 523 (1931).

A motorcycle dealer was not guilty of the statutory offense of knowingly allowing an unlicensed person to operate a motor vehicle, where a potential customer, who requested a test ride and gave repeated assurances that he had a motorcycle endorsement on his driver's license, apologized profusely to the dealer for having lied about the endorsement when he returned with the cycle to the dealership in the company of deputy after having been stopped for reckless riding, and the state presented no contrary evidence that the dealer knowingly permitted the unlicensed operation. [State v. Settles](#), 60 Ohio Misc. 2d 9, 573 N.E.2d 231 (Mun. Ct. 1990).

<sup>5</sup> [Gray v. District of Columbia](#), 165 A.2d 481 (Mun. Ct. App. D.C. 1960); [State v. Harris](#), 101 N.H. 95, 133 A.2d 483 (1957).

The fact that a car rental agency complied with its statutory duty to inspect a renter's license and compare the signature on the license to the renter's signature did not, by itself, preclude a finding that the company violated a California statute prohibiting rental car agencies from renting to unlicensed drivers, when it rented a vehicle to a driver with a suspended license. [Snyder v. Enterprise Rent-A-Car Co. of San Francisco \(ERAC-SF\)](#), 392 F. Supp. 2d 1116 (N.D. Cal. 2005).

<sup>6</sup> [People v. Asselta](#), 1 A.D.2d 960, 150 N.Y.S.2d 32 (2d Dep't 1956).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### C. Regulation and Offenses as to Speed; Slowing and Stopping


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## Research References

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### A.L.R. Library

A.L.R. Index, Assured Clear Distance Ahead  
A.L.R. Index, Automobiles and Highway Traffic  
A.L.R. Index, Drag Racing  
A.L.R. Index, Highways and Streets  
A.L.R. Index, Motor Vehicles  
A.L.R. Index, Public Transportation  
A.L.R. Index, Reckless Driving  
A.L.R. Index, School Buses  
A.L.R. Index, Schools and Education  
A.L.R. Index, Seatbelts  
A.L.R. Index, Slowdown  
A.L.R. Index, Slow Speed Traffic Regulation  
A.L.R. Index, Speed  
A.L.R. Index, Stalled or Disabled Vehicle  
A.L.R. Index, Standing Vehicles  
A.L.R. Index, Stopped or Standing Vehicles  
A.L.R. Index, Stopping Distances  
A.L.R. Index, Stop Signs  
A.L.R. Index, Sudden Stop or Start  
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## 7A Am. Jur. 2d Automobiles § 265

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### C. Regulation and Offenses as to Speed; Slowing and Stopping

##### 1. Speed

##### a. In General

## § 265. Regulation of speed, generally

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### West's Key Number Digest

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### A.L.R. Library

[Criminal Liability for Street Racing \(Drag Racing\)](#), [89 A.L.R.6th 565](#)

### Forms

Forms regarding speed, generally, see [Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic](#) [[Westlaw®\(r\) Search Query](#)]

In the exercise of the police power, states may regulate the speed of motor vehicles, and they have done so since the early days of motor vehicle travel.<sup>1</sup> Such a regulation may provide, for instance, that a motorist must operate a vehicle at a careful and prudent speed, and not in excess of the posted speed limit.<sup>2</sup> A state, however, did not have to prove that a defendant's speed exceeded any particular miles per hour limit in order to obtain a conviction for "careless and imprudent driving."<sup>3</sup> Moreover, a state was not required to prove that a complaining motorist complied with every vehicle-related regulation in

order to convict a defendant of failing to control the speed of his vehicle as necessary to avoid colliding with another vehicle on or entering the highway in compliance with the law; such an interpretation would be an unreasonable interpretation of the statute.<sup>4</sup>

A state may enact special regulations to meet particular conditions, such as by providing a higher speed limit for motorists using highways than for motorists using other roadways,<sup>5</sup> as in the case of those passing through construction zones.<sup>6</sup> A state may also make it an offense to fail to reduce speed to avoid an accident, a conviction for which requires proof that the motorist drove so carelessly that the motorist failed to avoid colliding with persons or property, but does not require proof that the motorist was exceeding the speed limit.<sup>7</sup>

A state has the right to enforce speed limits set by local subdivisions.<sup>8</sup> For a defendant to be convicted of speeding, a state was not required to introduce evidence of an engineering and traffic investigation that authorized the city to establish the speed limit.<sup>9</sup>

Laws limiting the speed of motor vehicles operating on public roadways are generally recognized as valid, if reasonable,<sup>10</sup> definite, and certain.<sup>11</sup>

Municipalities<sup>12</sup> and administrative bodies<sup>13</sup> may also be empowered to regulate the speed of motor vehicles on public ways.

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#### Footnotes

<sup>1</sup> [Roper v. Greenspon](#), 272 Mo. 288, 198 S.W. 1107 (1917); [Opocensky v. City of South Omaha](#), 101 Neb. 336, 163 N.W. 325 (1917).

<sup>2</sup> [State v. Martin](#), 2007 ME 23, 916 A.2d 961 (Me. 2007).  
However, a statute prohibiting the operation of a motor vehicle at a speed greater than reasonable and proper was facially vague, and violated due process, to the extent that it regulated the speed at which vehicles could be operated on the state's highways without providing a numerical speed limit or otherwise notifying motorists of the speed at which their conduct violated the law. [State v. Stanko](#), 1998 MT 321, 292 Mont. 192, 974 P.2d 1132 (1998).

<sup>3</sup> [State v. Goeman](#), 386 S.W.3d 873 (Mo. Ct. App. S.D. 2012).

<sup>4</sup> [Ruiz-Angeles v. State](#), 351 S.W.3d 489 (Tex. App. Houston 14th Dist. 2011), petition for discretionary review refused, (Feb. 8, 2012).

<sup>5</sup> [State v. Litreal](#), 170 Ohio App. 3d 670, 2006-Ohio-5416, 868 N.E.2d 1018 (4th Dist. Lawrence County 2006).

<sup>6</sup> [Harrison v. State](#), 800 So. 2d 1134 (Miss. 2001); [State v. Mathis](#), 2003 MT 112, 315 Mont. 378, 68 P.3d 756 (2003).

<sup>7</sup> [People v. Sturgess](#), 364 Ill. App. 3d 107, 300 Ill. Dec. 852, 845 N.E.2d 741 (1st Dist. 2006).

<sup>8</sup> [State v. Ostdiek](#), 351 S.W.3d 758 (Mo. Ct. App. W.D. 2011).

<sup>9</sup> [Klemetti v. State](#), 334 Ga. App. 513, 780 S.E.2d 346 (2015), cert. denied, (Feb. 8, 2016).

<sup>10</sup> [State v. Rodenhurst](#), 104 Haw. 319, 88 P.3d 1209 (2004), unpublished/noncitable; [Com. v. Kondor](#), 438 Pa. Super. 147, 651 A.2d 1135 (1994).

<sup>11</sup> § 274.

<sup>12</sup> § 266.

<sup>13</sup> § 267.

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## 7A Am. Jur. 2d Automobiles § 266

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### C. Regulation and Offenses as to Speed; Slowing and Stopping

##### 1. Speed

##### a. In General

## § 266. Municipal regulation of speed

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### West's Key Number Digest

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Pursuant to constitutional or charter provisions delegating legislative power, municipalities may enact ordinances pertaining to the speed of motor vehicles on their streets.<sup>1</sup> Where a municipality has the power to regulate the use of vehicles within its boundaries, it may regulate the speed of motor vehicles therein,<sup>2</sup> provided such regulation does not conflict with state legislative enactments.<sup>3</sup> However, a state legislature may constitutionally preempt the field with respect to regulation of the speed of motor vehicles, and forbid municipalities to vary such regulations.<sup>4</sup>

Two 30-mile-per-hour speed limit signs that had been erected on a county farm road, and which were in place at the time of a collision between an automobile and a school bus, were invalid, and thus, the automobile driver could not prevail on her negligence per se claim against a school district on the basis that the school bus driver violated any statute or ordinance by driving in excess of the posted speed limit; a county supervisor did not follow the law when he unilaterally placed the speed limit signs on the county farm road without first having conducted an engineering and traffic investigation, and then obtaining approval from the county board of supervisors through an ordinance.<sup>5</sup> However, a city acted within the authority granted under a nuisance statute in enacting an ordinance that authorized the use of video detection equipment to monitor compliance with traffic signals and speed limits within the city; city council findings memorialized in the ordinance, including that drivers in the municipality repeatedly violated posted speed limits, that the state law against speeding was inadequate to protect the city, and that the city had one of the highest fatality rates in the country resulting from red light violations, established that speeding and red light infractions within the municipality were nuisances per se.<sup>6</sup>

An ordinance holding a title owner of a vehicle responsible for a driver's act of speeding when the owner permitted the driver to operate the vehicle at a speed that exceeded the posted speed limit was not necessarily invalid despite the unconstitutional rebuttable presumption that the owner permitted the driver to operate the vehicle at a rate of speed that exceeded the posted

speed limit; rather, the city could still charge a violation of the ordinance if it could show that it had probable cause to believe that the owner gave the driver such permission, without relying on the presumption, dismissal of the charge was an appropriate remedy if the city failed to show probable cause, and a directed verdict was an appropriate remedy if the city failed to prove this element beyond a reasonable doubt at the time of trial.<sup>7</sup>

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#### Footnotes

- <sup>1</sup> State v. West, 95 Haw. 22, 18 P.3d 884 (2001).
- <sup>2</sup> State v. Town of Springville, 220 Ala. 286, 125 So. 387 (1929); People v. Levin, 93 Misc. 2d 106, 402 N.Y.S.2d 324 (N.Y. City Ct. 1978).
- <sup>3</sup> §§ 268 to 270.
- <sup>4</sup> Ex parte Daniels, 183 Cal. 636, 192 P. 442, 21 A.L.R. 1172 (1920).
- <sup>5</sup> Wayne County School Dist. v. Worsham, 83 So. 3d 380, 278 Ed. Law Rep. 1221 (Miss. 2012).
- <sup>6</sup> Titus v. City of Albuquerque, 149 N.M. 556, 2011-NMCA-038, 252 P.3d 780 (Ct. App. 2011).
- <sup>7</sup> City of Moline Acres v. Brennan, 470 S.W.3d 367 (Mo. 2015).

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## 7A Am. Jur. 2d Automobiles § 267

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### C. Regulation and Offenses as to Speed; Slowing and Stopping

##### 1. Speed

##### a. In General

## § 267. Administrative regulation of speed

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### West's Key Number Digest

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Statutes sometimes vest in administrative bodies the authority to establish speed limits for motor vehicles, or to vary established speed limits, and such provisions are generally regarded as valid. For instance, legislative power is not unconstitutionally delegated to a state highway commission by a statute empowering it to regulate the maximum speed of certain vehicles.<sup>1</sup> However, there is authority to the effect that a statute empowering an administrative body, such as a highway commission, to establish a rate of speed on a state highway less than the rate otherwise established by law is invalid as an unconstitutional delegation of legislative authority.<sup>2</sup>

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### Footnotes

<sup>1</sup> [Ashland Transfer Co. v. State Tax Commission](#), 247 Ky. 144, 56 S.W.2d 691, 87 A.L.R. 534 (1932) (holding that a highway commission was properly delegated the power to reduce the maximum speed limit established by it for motor trucks whenever, in its judgment, a road, bridge, or culvert is, by reason of design, deterioration, rain, or other climatic or natural causes, liable to be damaged or destroyed by trucks of a greater speed than that fixed by it).

<sup>2</sup> [In re McLain](#), 190 Cal. 376, 212 P. 620 (1923).  
A state highway commission could not validly reduce the speed limit from 70 to 50 miles per hour on the ground of fuel conservation, where the statute creating the commission authorized it to reduce the maximum speed limit only for reasons of safety. [State v. Pierce](#), 11 Wash. App. 577, 523 P.2d 1201 (Div. 1 1974).



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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### C. Regulation and Offenses as to Speed; Slowing and Stopping

##### 1. Speed

##### a. In General

## § 268. Conflict between state and local regulations as to speed

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In general, local regulations as to the speed of motor vehicles which are in conflict with state statutes on the subject are invalid.<sup>1</sup> Thus, where a state legislature has preempted the field with respect to speed regulations generally, or with respect to particular speed regulations, municipalities cannot legislate in the matter.<sup>2</sup> An ordinance that authorized the use of video detection equipment to monitor compliance with traffic signals and speed limits within the city and held vehicle owners strictly and vicariously liable for violations was not preempted by the state motor vehicle code; the city enacted the ordinance because its council found that state laws were insufficient in deterring speeding and red light infractions in the city limits, and the ordinance did not permit an act prohibited by the motor vehicle code or vice versa.<sup>3</sup> Moreover, a city ordinance establishing an automatic traffic enforcement (ATE) system through which city leveled civil penalties against the owners of vehicles that failed to obey red light traffic signals or violated speed laws was not irreconcilable with, and therefore not impliedly preempted by, state statutes that established substantive standards relating to speeding and obeying traffic signals, established mechanisms of enforcement, and provided a uniform citation and complaint for criminal infractions relating to rules of the road.<sup>4</sup>

For purposes of a challenge to a municipal ordinance under a Home Rule Amendment to the state constitution, the regulation of traffic is an exercise of police power that relates to public health and safety, as well as the general welfare of the public, rather than an exercise of local self-government.<sup>5</sup>

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### Footnotes

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- <sup>1</sup> Duval Lumber Co. v. Slade, 147 Fla. 137, 2 So. 2d 371 (1941); State v. Yorkey, 163 Vt. 355, 657 A.2d 1079 (1995).
- <sup>2</sup> Harshaw v. Kansas City Public Service Co., 154 Kan. 481, 119 P.2d 459 (1941); People v. Fried, 153 Misc. 2d 764, 583 N.Y.S.2d 135 (N.Y. City Ct. 1992).
- <sup>3</sup> Titus v. City of Albuquerque, 149 N.M. 556, 2011-NMCA-038, 252 P.3d 780 (Ct. App. 2011).
- <sup>4</sup> City of Davenport v. Seymour, 755 N.W.2d 533 (Iowa 2008).
- <sup>5</sup> Mendenhall v. Akron, 117 Ohio St. 3d 33, 2008-Ohio-270, 881 N.E.2d 255 (2008).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### C. Regulation and Offenses as to Speed; Slowing and Stopping

##### 1. Speed

##### a. In General

### § 269. Conflict between state and local regulations as to speed—Where rate of speed is fixed by state statute

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Where a state statute is designed to regulate the speed of motor vehicles throughout the state, including within municipalities, a local ordinance which purports to establish a speed limit lower than the specific limit fixed by the statute is in conflict therewith and is invalid.<sup>1</sup> and the same is true of an ordinance establishing a higher speed limit than the statutory rate.<sup>2</sup>

On the other hand, where the state statute does not purport to be controlling throughout the state, and local authorities are empowered to regulate the speed of motor vehicles using their streets, a local ordinance establishing either a lower<sup>3</sup> or a higher<sup>4</sup> speed limit than that prescribed by the statute is not in conflict with it.

As cities, towns, and villages derive their authority to set the speed limits within their jurisdictional limits by ordinance under a state's motor vehicle statute, driving in excess of that posted speed limit becomes a violation of state law.<sup>5</sup> Moreover, although a city may modify a speed limit in a construction zone within the city, the recourse for the violation of such speed limit remains an infraction prohibited and punishable according to state statute.<sup>6</sup>

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#### Footnotes

<sup>1</sup> [Leslie v. Superior Court](#), 73 Cal. App. 4th 1042, 87 Cal. Rptr. 2d 313 (2d Dist. 1999), as modified, (Aug. 17, 1999); [Schneiderman v. Sesanstain](#), 121 Ohio St. 80, 7 Ohio L. Abs. 349, 167 N.E. 158, 64 A.L.R. 981 (1929).

- <sup>2</sup> [People v. Goodrich](#), 33 Cal. App. 4th Supp. 1, 39 Cal. Rptr. 2d 154, 97 Ed. Law Rep. 1116 (App. Dep't Super. Ct. 1994) (holding that local authorities could not increase the maximum speed limit in school zones which had been established by state law).
- <sup>3</sup> [Christensen v. Tate](#), 87 Neb. 848, 128 N.W. 622 (1910).
- <sup>4</sup> [Robinson v. Haydel](#), 177 Miss. 233, 171 So. 7 (1936).
- <sup>5</sup> [State v. Ostdiek](#), 351 S.W.3d 758 (Mo. Ct. App. W.D. 2011).
- <sup>6</sup> [Maraman v. City of Carmel](#), 47 N.E.3d 1218 (Ind. Ct. App. 2015), transfer denied, 48 N.E.3d 317 (Ind. 2016).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### C. Regulation and Offenses as to Speed; Slowing and Stopping

##### 1. Speed

##### a. In General

### § 270. Conflict between state and local regulations as to speed—Where state statute regulates speed other than by fixed rate

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#### West's Key Number Digest

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Even though a state statute regulating the speed of motor vehicles does not establish a fixed rate of speed, as when it provides that the speed must be reasonable under the circumstances or makes speed in excess of a certain rate only presumptively excessive, an ordinance fixing the rate of speed of vehicles within a municipality has been regarded as in conflict with the statute where the statute purports to be applicable throughout the state and in all political subdivisions thereof.<sup>1</sup> However, where a state statute regulating the speed of vehicles in terms other than a fixed rate does not purport to preempt the field of speed regulation, and local authorities are empowered to regulate the speed of vehicles using their streets, an ordinance establishing a fixed rate of speed for vehicles within a municipality is not invalid as in conflict with the statute.<sup>2</sup>

A state did not meet its burden of establishing a prima facie or fixed speed, as required to support an adjudication for the infraction of speeding, where the state alleged only that the defendant violated the applicable statute by driving 54 miles per hour in a 30 mph zone, where the applicable statute contained no reference to 30 mph speed zones, and where the state did not prove or otherwise seek judicial notice of a lawfully established altered speed zone.<sup>3</sup>

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#### Footnotes

<sup>1</sup> [Schneiderman v. Sesanstein](#), 121 Ohio St. 80, 7 Ohio L. Abs. 349, 167 N.E. 158, 64 A.L.R. 981 (1929); [Winters v. Bisailon](#), 152 Or. 578, 54 P.2d 1169 (1936).

<sup>2</sup> [Roper v. Greenspon, 272 Mo. 288, 198 S.W. 1107 \(1917\).](#)

<sup>3</sup> [Byrd v. State, 6 N.E.3d 464 \(Ind. Ct. App. 2014\).](#)

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#### C. Regulation and Offenses as to Speed; Slowing and Stopping

##### 1. Speed

##### a. In General

## § 271. Speed limit signs

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State statutes may provide that local regulations as to the maximum speed of motor vehicles are not effective until signs or notice thereof are posted.<sup>1</sup> Compliance with such requirements is a condition precedent to the enforcement of a local speed regulation,<sup>2</sup> although it has been said that substantial, rather than strict, compliance with such requirements is all that is required.<sup>3</sup>

In a nonjury trial on charges of driving in excess of the maximum speed limit, it was unnecessary to establish the posting of 65 miles per hour speed limit signs, since the defendant was charged with driving at a rate of 90 miles per hour, which was in excess of the state's 65 mile per hour maximum speed limit.<sup>4</sup>

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### Footnotes

<sup>1</sup> [People ex rel. Hainer v. Keeper of Prison of Seventh Dist. Magistrates' Court of City of New York](#), 190 N.Y. 315, 83 N.E. 44 (1907).

<sup>2</sup> [Incorporated Town of Decatur v. Gould](#), 185 Iowa 203, 170 N.W. 449 (1919).

<sup>3</sup> [People v. Zambito](#), 21 Misc. 2d 815, 194 N.Y.S.2d 724 (County Ct. 1959).

<sup>4</sup> [People v. Palu](#), 47 Misc. 3d 35, 6 N.Y.S.3d 386 (App. Term 2015).



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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### C. Regulation and Offenses as to Speed; Slowing and Stopping

##### 1. Speed

##### a. In General

## § 272. Antiracing regulations

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### A.L.R. Library

[Criminal Liability for Street Racing \(Drag Racing\)](#), 89 A.L.R.6th 565

### Trial Strategy

[Proof of Seatbelt Defense](#), 65 Am. Jur. Proof of Facts 3d 1

[Reconstruction of Traffic Accidents](#), 9 Am. Jur. Proof of Facts 3d 115

### Forms

Forms regarding speeding, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic

[Westlaw®(r) Search Query]

A number of speed regulations are specifically aimed at racing, or drag racing.<sup>1</sup> These regulations have been challenged on such constitutional grounds as vagueness and uncertainty, but they have usually been upheld.<sup>2</sup>

While the courts have conceded that an act of illegal racing must be accompanied by some culpable mental state involving an intent or agreement to race, objective tests of intent have been applied, and an inference of intent to race from the observed facts of highway behavior has frequently been allowed, or even required, in suitable circumstances.<sup>3</sup>

Some courts apply an objective test of awareness when determining whether a defendant in a prosecution for felony racing acted in a manner so gross, wanton and culpable as to show a reckless disregard for human life; therefore, a defendant must have had an actual or constructive consciousness of the danger involved in the act or omission.<sup>4</sup>

Since antiracing regulations have tended to supplement speeding statutes and ordinances, the courts have recognized that a violation or observance of a speed limit is only some evidence, or merely one of the factors, bearing on the ultimate fact of racing.<sup>5</sup> The rapidity of acceleration, although more clearly a factor in drag racing than in racing generally, has been an element in a number of prosecutions.<sup>6</sup> Also, other elements of highway behavior, such as simultaneous starting and running abreast, have been evidentiary elements in racing prosecutions.<sup>7</sup>

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<sup>1</sup> *Healthwise of Kentucky, Ltd. v. Anglin*, 956 S.W.2d 213 (Ky. 1997); *In re Welfare of C.P.W.*, 601 N.W.2d 204 (Minn. Ct. App. 1999); *State v. Preston*, 142 Ohio App. 3d 619, 756 N.E.2d 705 (12th Dist. Butler County 2001); *Com. v. Holstein*, 2007 PA Super 184, 927 A.2d 628 (2007).

The plain language of a statute prohibiting exhibitions of vehicle speed or acceleration on the highways limited the statute's applicability to speed competitions. *State v. Guzman*, 240 S.W.3d 362 (Tex. App. Austin 2007), petition for discretionary review refused, (Dec. 12, 2007).

<sup>2</sup> *People v. Heckard*, 164 Colo. 19, 431 P.2d 1014 (1967); *State v. Hooper*, 10 Ohio App. 2d 229, 39 Ohio Op. 2d 435, 227 N.E.2d 414 (7th Dist. Monroe County 1966).

Where there was wide disparity between the penalties imposed under an ordinance prohibiting drag racing and those imposed under state legislation, the ordinance was invalid as conflicting with a state statute requiring that penalties for motor vehicle violations be uniform throughout the state and in all political subdivisions and municipal corporations. *State v. Waite*, 27 Ohio App. 2d 187, 56 Ohio Op. 2d 350, 273 N.E.2d 343 (9th Dist. Medina County 1971).

<sup>3</sup> *Agovino v. Kunze*, 181 Cal. App. 2d 591, 5 Cal. Rptr. 534 (2d Dist. 1960); *State v. Dionne*, 1 Conn. Cir. Ct. 395, 24 Conn. Supp. 59, 186 A.2d 561 (App. Div. 1962).

<sup>4</sup> *Doggett v. Com.*, 66 Va. App. 219, 783 S.E.2d 555 (2016) (the evidence supported a finding that the defendant's act of racing was a proximate cause of serious injuries to his passenger from an accident that occurred when another vehicle hit the defendant's car, as necessary to support a conviction for felony racing).

<sup>5</sup> *Walker v. Hall*, 34 Md. App. 571, 369 A.2d 105 (1977); *Com. v. Honeycutt*, 227 Pa. Super. 265, 323 A.2d 775 (1974).

<sup>6</sup> *Com. v. Honeycutt*, 227 Pa. Super. 265, 323 A.2d 775 (1974).

<sup>7</sup> *City of Brookings v. Thomsen*, 84 S.D. 651, 176 N.W.2d 46 (1970) (overruled on other grounds by, *City of Brookings v. Roberts*, 88 S.D. 623, 226 N.W.2d 380 (1975)).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### C. Regulation and Offenses as to Speed; Slowing and Stopping

##### 1. Speed

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## § 273. Effect of speed law violations

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### A.L.R. Library

[Criminal Liability for Street Racing \(Drag Racing\)](#), 89 A.L.R.6th 565

### Trial Strategy

[Proof and Disproof of Alcohol-Induced Driving Impairment Through Breath Alcohol Testing](#), 4 Am. Jur. Proof of Facts 3d 229

[Tailgating](#), 22 Am. Jur. Proof of Facts 43

The violation of a law relating to the speed of motor vehicles is ordinarily a criminal offense, in the nature of a misdemeanor,<sup>1</sup> although in some jurisdictions such a violation is denominated a traffic infraction, which is of a lesser nature than a criminal offense.<sup>2</sup> Violators of statutes or ordinances regulating speed in terms of what is reasonable and proper under the traffic circumstances and highway conditions, rather than by prescribing a fixed speed limit, are subject to criminal

liability to the same extent as violators of fixed speed regulations.<sup>3</sup> Under certain circumstances, the violation of a speed law may also constitute the criminal offense of reckless driving.<sup>4</sup> A finding of reckless conduct, as an element of a criminal offense arising from operation of a motor vehicle, is justified by a combination of excessive speed and other factors that indicate a conscious disregard of a substantial risk likely to cause death or great bodily harm to another, such that a reasonable person would act differently under the same circumstances.<sup>5</sup> Moreover, a default judgment entered against a defendant for a noncriminal speeding infraction did not preclude the state from prosecuting him for the related criminal offense of excessive speeding; the statute permitted the prosecution of a criminal offense where the adjudicated traffic infraction was a lesser included traffic infraction of the charged crime.<sup>6</sup>

As a rule, one may be held liable for the violation of a speed regulation without regard to the individual's intent or knowledge of such violation.<sup>7</sup> Under some statutes, the criminal offense of excessive speeding is not a strict liability offense, but rather requires the state to prove that a defendant acted intentionally, knowingly, or recklessly.<sup>8</sup>

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#### Footnotes

- <sup>1</sup> [White v. City of Philadelphia](#), 197 Miss. 166, 19 So. 2d 493 (1944), error overruled, 197 Miss. 166, 19 So. 2d 744 (1944); [Ex parte Slaughter](#), 92 Tex. Crim. 212, 243 S.W. 478, 26 A.L.R. 891 (1922).
- <sup>2</sup> [Lea v. MacDuff](#), 205 Misc. 24, 126 N.Y.S.2d 646 (Sup 1953).
- <sup>3</sup> [Lipsey v. State](#), 154 Fla. 32, 16 So. 2d 439 (1944); [Gallaher v. State](#), 193 Ind. 629, 141 N.E. 347, 29 A.L.R. 1059 (1923).
- <sup>4</sup> § 361.
- <sup>5</sup> [Smith v. State](#), 413 S.W.3d 709 (Mo. Ct. App. E.D. 2013).
- <sup>6</sup> [State v. Kalua](#), 136 Haw. 181, 358 P.3d 750 (Ct. App. 2015).
- <sup>7</sup> [People v. Caddy](#), 189 Colo. 353, 540 P.2d 1089 (1975).
- <sup>8</sup> [State v. Bortel](#), 129 Haw. 153, 296 P.3d 366 (2013).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### C. Regulation and Offenses as to Speed; Slowing and Stopping

##### 1. Speed

##### b. Validity and Construction of Particular Kinds of Regulations

### § 274. Validity and construction of particular speed regulations; prohibition of speed greater than reasonable or prudent under circumstances

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#### A.L.R. Library

[Indefiniteness of automobile speed regulations as affecting validity](#), 6 A.L.R.3d 1326

In order to be guilty of speeding, one need only exceed the designated speed limit.<sup>1</sup> A person violates the speed limit under a statute establishing certain default speed limits for particular types of roads or vehicles when, if no designated speed is posted, the person drives at a speed greater than one of the speeds listed in the statute.<sup>2</sup>

Clearly, a statute which provides that it is unlawful to drive on the public roadways at a rate of speed in excess of a designated number of miles per hour is not invalid for indefiniteness.<sup>3</sup> Statutes and ordinances prohibiting the operation of a motor vehicle at a rate of speed greater than is reasonable or prudent under the circumstances, having regard to the traffic and the use of the way, have usually been upheld against the contention that they are so indefinite and uncertain as to be void.<sup>4</sup>

Under such enactments, a given speed may be unreasonable and imprudent even though no accident results, since it is the speed itself, and not an accident, that the regulation is aimed at.<sup>5</sup> The requirement of reasonableness and prudence refers not to the manner of driving generally, but to the speed of the vehicle.<sup>6</sup> Surrounding circumstances pertinent to whether a speed is

reasonable and prudent have included such matters as the width of the road, the extent of visibility, the presence of hills or curves, the condition of the pavement, the number of lanes, the existence of intersections and other traffic, and the condition of the vehicle and its load.<sup>7</sup>

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#### Footnotes

- <sup>1</sup> [SAPP v. State](#), 338 Ga. App. 628, 791 S.E.2d 201 (2016).
- <sup>2</sup> [State v. Patrick](#), 251 Or. App. 477, 284 P.3d 547 (2012).
- <sup>3</sup> [Parrocchini v. State](#), 90 Tex. Crim. 320, 234 S.W. 671 (1921).
- <sup>4</sup> [People v. Banat](#), 39 Cal. App. 2d Supp. 765, 100 P.2d 374 (App. Dep't Super. Ct. 1940); [State v. Coppes](#), 247 Iowa 1057, 78 N.W.2d 10 (1956); [People v. Lewis](#), 13 N.Y.2d 180, 245 N.Y.S.2d 1, 194 N.E.2d 831, 6 A.L.R.3d 1321 (1963).
- <sup>5</sup> [People v. Don Carlos](#), 47 Cal. App. 2d Supp. 863, 117 P.2d 748 (App. Dep't Super. Ct. 1941).  
Proof of a particular hazardous act placing the general public at risk of injury is not a necessary element of the offense of hazardous driving; the statute expressly contemplates driving at speeds which create "potential hazards." [Phillips v. West Virginia Div. of Motor Vehicles](#), 226 W. Va. 645, 704 S.E.2d 645 (2010).
- <sup>6</sup> [People v. Banat](#), 39 Cal. App. 2d Supp. 765, 100 P.2d 374 (App. Dep't Super. Ct. 1940).
- <sup>7</sup> [State v. Dehnke](#), 40 Ohio App. 2d 194, 69 Ohio Op. 2d 187, 318 N.E.2d 395 (3d Dist. Defiance County 1974).

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## 7A Am. Jur. 2d Automobiles § 275

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### C. Regulation and Offenses as to Speed; Slowing and Stopping

##### 1. Speed

##### b. Validity and Construction of Particular Kinds of Regulations

## § 275. Requirement of ability to stop in assured clear distance ahead

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  5(1), 5(4), 6, 7, 10, 11, 118, 324, 331

### A.L.R. Library

[Automobiles: Sudden emergency as exception to rule requiring motorist to maintain ability to stop within assured clear distance ahead, 75 A.L.R.3d 327](#)

Some statutes prohibit one from operating a motor vehicle at a rate of speed greater than will permit the individual to bring it to a stop in the assured clear distance ahead.<sup>1</sup> The assured clear distance ahead constantly changes as the motorist proceeds and is measured at any moment by the distance between the motorist's vehicle and the limit of the motorist's vision ahead, or by the distance between the vehicle and any intermediate discernible static or forward-moving object in the way ahead constituting an obstruction in the motorist's path of travel.<sup>2</sup> In applying such a statute, no distinction is made as to whether the discernible object is moving at a normal or slow speed.<sup>3</sup> However, such a statute has been regarded as inapplicable in a situation where a forward motorist abruptly cuts down the following motorist's assured clear distance ahead by backing up in the latter's lane of traffic.<sup>4</sup>

The administratrix of a pedestrian's estate could not recover against a motorist for the negligent failure to maintain an assured clear distance, absent any evidence to establish that the pedestrian was ahead of the motorist and in the motorist's path of travel, that the pedestrian was stationary or moving in the same direction as the motorist, that the pedestrian did not suddenly appear in the motorist's path, and that the pedestrian was reasonably discernable, and in view of the undisputed evidence that

the motorist was proceeding lawfully in his lane, and that the area where the pedestrian was walking was not a marked crosswalk.<sup>5</sup>

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#### Footnotes

- <sup>1</sup> [Peckinpugh v. Engelke](#), 215 Iowa 1248, 247 N.W. 822 (1933); [Murray v. Cameron](#), 119 Ohio App. 93, 26 Ohio Op. 2d 256, 197 N.E.2d 207 (10th Dist. Franklin County 1963); [Stoker v. State](#), 170 S.W.3d 807 (Tex. App. Tyler 2005).
- <sup>2</sup> [Coppola v. Jameson](#), 200 N.W.2d 877 (Iowa 1972); [Erdman v. Mestrovich](#), 155 Ohio St. 85, 44 Ohio Op. 97, 97 N.E.2d 674, 31 A.L.R.2d 1417 (1951).
- <sup>3</sup> [Bickel v. American Can Co.](#), 154 Ohio St. 380, 43 Ohio Op. 259, 96 N.E.2d 4 (1950).
- <sup>4</sup> [Cerny v. Domer](#), 13 Ohio St. 2d 117, 42 Ohio Op. 2d 332, 235 N.E.2d 132 (1968).
- <sup>5</sup> [Meyer v. Rapacz](#), 2011-Ohio-2537, 2011 WL 2112724 (Ohio Ct. App. 8th Dist. Cuyahoga County 2011).

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## 7A Am. Jur. 2d Automobiles § 276

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### C. Regulation and Offenses as to Speed; Slowing and Stopping

##### 1. Speed

##### b. Validity and Construction of Particular Kinds of Regulations

## § 276. Prohibition of speed endangering others or their property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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### A.L.R. Library

[Indefiniteness of automobile speed regulations as affecting validity](#), 6 A.L.R.3d 1326

Statutes which prohibit the operation of motor vehicles at such a speed as to endanger the lives or property of others have generally been regarded as merely expressive of the common law,<sup>1</sup> and held not to be void for unreasonableness or uncertainty.<sup>2</sup> On the other hand, a statute prohibiting driving at such a speed as to endanger the life, limb, or property of any person, or at a rate of speed greater than will permit such person to bring the vehicle to a stop without injury to another or that person's property, has been declared invalid as too vague and indefinite to constitute a sufficient definition of criminal conduct.<sup>3</sup>

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### Footnotes

<sup>1</sup> [Wilson v. Moudy](#), 22 Tenn. App. 356, 123 S.W.2d 828 (1938).

§ 276. Prohibition of speed endangering others or their property, 7A Am. Jur. 2d...

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<sup>2</sup> Hood & Wheeler Furniture Co. v. Royal, 200 Ala. 607, 76 So. 965 (1917); People v. Banat, 39 Cal. App. 2d Supp. 765, 100 P.2d 374 (App. Dep't Super. Ct. 1940).

<sup>3</sup> People v. Firth, 3 N.Y.2d 472, 168 N.Y.S.2d 949, 146 N.E.2d 682 (1957), order aff'd, 3 N.Y.2d 1024, 170 N.Y.S.2d 358, 147 N.E.2d 744 (1958).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### C. Regulation and Offenses as to Speed; Slowing and Stopping

##### 1. Speed

##### b. Validity and Construction of Particular Kinds of Regulations

## § 277. Prohibition of slow speed impeding traffic

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(4\)](#), [6](#), [7](#), [10](#), [11](#), [118](#), [324](#), [331](#)

### A.L.R. Library

[Construction, application, and effect, in civil motor vehicle accident cases, of "slow speed" traffic statutes prohibiting driving at such a slow speed as to create danger, to impede normal traffic movement, or the like, 66 A.L.R.2d 1194](#)

A number of states have enacted slow speed statutes, which prohibit the operation of a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with law.<sup>1</sup> These statutes are intended to apply to vehicles traveling in the normal stream of traffic, and are construed to be for the protection of those traveling in the same direction as the slow vehicle as well as those approaching from the opposite direction.<sup>2</sup> However, a statute of this type has been regarded as inapplicable to a vehicle removing snow from a highway, such a vehicle being excepted as a vehicle actually engaged in work upon the surface of a highway.<sup>3</sup> Moreover, a court has refused to apply a statute governing slow-moving vehicles to a vehicle traveling below the posted speed limit in the left lane of a highway while in the process of passing other vehicles.<sup>4</sup>

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### Footnotes

<sup>1</sup> Satter v. Turner, 251 Minn. 1, 86 N.W.2d 85, 66 A.L.R.2d 1178 (1957); Com. v. Robbins, 441 Pa. Super. 437, 657 A.2d 1003 (1995); Green v. State, 773 S.W.2d 816 (Tex. App. San Antonio 1989).

<sup>2</sup> Satter v. Turner, 251 Minn. 1, 86 N.W.2d 85, 66 A.L.R.2d 1178 (1957); Lafferty v. Wattle, 349 S.W.2d 519 (Mo. Ct. App. 1961).

<sup>3</sup> Price v. State Highway Commission, 62 Wyo. 385, 167 P.2d 309 (1946).

<sup>4</sup> U.S. v. Gilliam, 275 F. Supp. 2d 797 (W.D. Ky. 2003) (applying California law).

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### C. Regulation and Offenses as to Speed; Slowing and Stopping

##### 1. Speed

##### b. Validity and Construction of Particular Kinds of Regulations

## § 278. Regulation of speed in particular kinds of districts or localities; business districts

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### A.L.R. Library

[Meaning of "residence district," "business district," "school area," and the like, in statutes and ordinances regulating speed of motor vehicles, 50 A.L.R.2d 343](#)

Statutes or ordinances regulating the speed of motor vehicles in business districts, or the like, have been upheld as valid,<sup>1</sup> and in the construction of such regulations, it has been said that common sense should be applied to determine whether a particular area is a business district, and that such a term, without more, is applicable regardless of the time of day or the amount of traffic present.<sup>2</sup>

While a hospital zone may be deemed a business district,<sup>3</sup> a common-sense interpretation precludes a finding that a country settlement of four dwelling houses and a filling station is a business district within the meaning of such a speed regulation.<sup>4</sup>

Under some measures regulating the speed of motor vehicles in business districts, the term business district is defined as one in which the frontage on a street for a particular distance is occupied by business buildings in a specified percentage,<sup>5</sup> and such measures have been construed to require that the area contiguous to both sides of the street be so occupied for the requisite distance to constitute a business district.<sup>6</sup> Other authorities take the view that a business district exists where only one side of the street meets the requirement of percentage of business structures.<sup>7</sup> Under one type of statute, the percentage of

business structures required to constitute a business district exists where the number of business structures on either one side of the street, or collectively on both sides, is sufficient to reach the required percentage.<sup>8</sup> In interpreting statutes of this type, the courts have determined that a building may front on a street even though it is set back from the street, provided there is no other building between it and the street and no more than a reasonable space between the building and the street.<sup>9</sup>

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#### Footnotes

- <sup>1</sup> [People v. Dow](#), 155 Mich. 115, 118 N.W. 745 (1908).
- <sup>2</sup> [Ahrens v. Egan](#), 61 Ohio L. Abs. 273, 104 N.E.2d 190 (Ct. App. 2d Dist. Montgomery County 1951).
- <sup>3</sup> [Neese v. Boatright](#), 124 Ind. App. 680, 118 N.E.2d 510 (1954).
- <sup>4</sup> [Bessett v. Hackett](#), 66 So. 2d 694 (Fla. 1953).
- <sup>5</sup> [State v. Zeus](#), 56 N.J. Super. 323, 152 A.2d 865 (County Ct. 1959); [Hinson v. Dawson](#), 241 N.C. 714, 86 S.E.2d 585, 50 A.L.R.2d 333 (1955).
- <sup>6</sup> [Utility Trailer Works v. Phillips](#), 249 Ala. 61, 29 So. 2d 289 (1946); [Krepcik v. Interstate Transit Lines](#), 154 Neb. 671, 48 N.W.2d 839 (1951).
- <sup>7</sup> [Hinson v. Dawson](#), 241 N.C. 714, 86 S.E.2d 585, 50 A.L.R.2d 333 (1955).
- <sup>8</sup> [Stoll v. Galles Motor Co.](#), 1955-NMSC-097, 60 N.M. 186, 289 P.2d 626 (1955).
- <sup>9</sup> [Hinson v. Dawson](#), 241 N.C. 714, 86 S.E.2d 585, 50 A.L.R.2d 333 (1955); [Ahrens v. Egan](#), 61 Ohio L. Abs. 273, 104 N.E.2d 190 (Ct. App. 2d Dist. Montgomery County 1951).

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## 7A Am. Jur. 2d Automobiles § 279

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### C. Regulation and Offenses as to Speed; Slowing and Stopping

##### 1. Speed

##### b. Validity and Construction of Particular Kinds of Regulations

## § 279. Regulation of speed in particular kinds of districts or localities; business districts—Residence districts

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### A.L.R. Library

[Meaning of "residence district," "business district," "school area," and the like, in statutes and ordinances regulating speed of motor vehicles, 50 A.L.R.2d 343](#)

While some statutes or ordinances governing speed in a residence district define that term clearly, as a specified number of dwelling houses in a designated distance along a street,<sup>1</sup> others define the term less precisely. Where the speed regulation defines the term residence district as one "mainly occupied" by dwellings, it has been held in some cases that at least 50% of the frontage must be dwellings,<sup>2</sup> while other cases reject this interpretation.<sup>3</sup> The position has been taken that space fronting on both sides of a street must be analyzed in determining whether an area is a residence district,<sup>4</sup> although there is authority to the effect that both sides of the street need not be occupied with dwellings to constitute a residence district.<sup>5</sup>

With respect to speed regulations applicable to residence districts, questions have arisen as to what proximity and physical relationship a building must bear to a street to be counted as occupying territory fronting on or contiguous to the street.<sup>6</sup>

Footnotes

- <sup>1</sup> Hill v. Fresno County, 140 Cal. App. 272, 35 P.2d 593 (4th Dist. 1934).
- <sup>2</sup> Minton v. Gobble, 42 Tenn. App. 475, 304 S.W.2d 337 (1957).
- <sup>3</sup> Gordon v. Cozart, 110 So. 2d 75 (Fla. 2d DCA 1959); Bowling Green-Hopkinsville Bus Co. v. Adams, 261 S.W.2d 14 (Ky. 1953).
- <sup>4</sup> Klein v. Harris, 268 Ala. 540, 108 So. 2d 425 (1958).
- <sup>5</sup> Roberts v. Taylor, 339 S.W.2d 653 (Ky. 1960).
- <sup>6</sup> Adrian v. Guyette, 14 Cal. App. 2d 493, 58 P.2d 988 (4th Dist. 1936) (building did not front on street where it was single structure with principal entrance located on different street); Thoms v. Dowdy, 201 Va. 581, 112 S.E.2d 868 (1960) (open spaces between buildings fronting on street not considered as occupied by dwellings).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### C. Regulation and Offenses as to Speed; Slowing and Stopping

##### 1. Speed

##### b. Validity and Construction of Particular Kinds of Regulations

## § 280. Regulation of speed in particular kinds of districts or localities; business districts—School areas

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### A.L.R. Library

[Meaning of "residence district," "business district," "school area," and the like, in statutes and ordinances regulating speed of motor vehicles, 50 A.L.R.2d 343](#)

Where a statute or ordinance regulates the speed of motor vehicles passing a school building, the regulation is not limited to driving immediately in front, back, or at the side of a school building.<sup>1</sup> On the other hand, it has been determined that a vehicle at a distance of 600<sup>2</sup> or 700<sup>3</sup> feet from a school cannot be regarded as passing a school within the meaning of such a speed regulation.

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### Footnotes

<sup>1</sup> [Stevenson v. Sarfert, 310 Pa. 458, 165 A. 225 \(1933\).](#)

<sup>2</sup> Rosenstrom v. North Bend Stage Line, 154 Wash. 57, 280 P. 932 (1929).

<sup>3</sup> Gagnon v. Krikorian, 92 N.H. 344, 31 A.2d 49 (1943).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### C. Regulation and Offenses as to Speed; Slowing and Stopping

##### 2. Slowing and Stopping

## § 281. Slowing and stopping, generally; signals

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### A.L.R. Library

[Sudden or unsignaled stop or slowing of motor vehicle as negligence](#), 29 A.L.R.2d 5

### Trial Strategy

[Feasibility of Stopping or Parking Vehicle Off Roadway](#), 26 Am. Jur. Proof of Facts 2d 575

### Forms

Forms regarding stops, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic  
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It is frequently provided by statute or ordinance that a motorist, before bringing a vehicle to a stop on a roadway, must be confident that the stop can be made in safety.<sup>1</sup> A motorist can be found to have violated a statute prohibiting impeding traffic where the motorist stops the vehicle to speak to a person in a street, causing another motorist to drive into an oncoming traffic lane to avoid the vehicle.<sup>2</sup> However, a statute prohibiting stopping in certain areas has been found not to apply to a disabled vehicle if it is impossible to avoid stopping in a location designated therefor.<sup>3</sup> Likewise, a statute prohibiting stopping on a roadway without leaving an unobstructed pathway opposite the vehicle has been found not to apply when a vehicle is forced to a stop for mechanical reasons or in an emergency.<sup>4</sup>

Statutes or ordinances generally prohibit motorists from stopping or suddenly decreasing their speed without first giving appropriate signals to motorists to the rear.<sup>5</sup> Some such provisions require the signal only where other motorists or persons may be affected by the stop or decrease in speed.<sup>6</sup>

Situations may arise where it is impracticable to give a signal of the intention to stop or slow down, and statutes requiring such signals often provide that they need be given only when there is an opportunity to do so,<sup>7</sup> not, for example, when there is an emergency.<sup>8</sup>

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#### Footnotes

- <sup>1</sup> Warner v. Lazarus, 229 N.C. 27, 47 S.E.2d 496 (1948); Johnson v. Angretti, 364 Pa. 602, 73 A.2d 666 (1950).
- <sup>2</sup> State v. Meza, 2006 MT 210, 333 Mont. 305, 143 P.3d 422 (2006).
- <sup>3</sup> Lino v. Allstate Ins. Co., 937 So. 2d 888 (La. Ct. App. 4th Cir. 2006), writ denied, 942 So. 2d 542 (La. 2006).
- <sup>4</sup> Cox v. Allen, 256 Ga. App. 53, 567 S.E.2d 363 (2002).
- <sup>5</sup> Robertson v. Johnson, 104 Ga. App. 387, 121 S.E.2d 829 (1961); Kantor v. Ash, 215 Md. 285, 137 A.2d 661, 69 A.L.R.2d 585 (1958); Kuether v. Locke, 261 Minn. 41, 110 N.W.2d 539 (1961); Hipp v. Williams, 113 Ohio App. 473, 18 Ohio Op. 2d 67, 178 N.E.2d 829 (6th Dist. Lucas County 1960).
- <sup>6</sup> Triplett v. Daniel, 255 Ala. 566, 52 So. 2d 184 (1951); Johnson v. Angretti, 364 Pa. 602, 73 A.2d 666 (1950).
- <sup>7</sup> Rodriguez v. Savage Transp. Co., 77 Cal. App. 2d 162, 175 P.2d 37 (1st Dist. 1946); Strimple v. O.K. Warehouse Co., 151 Kan. 98, 98 P.2d 169 (1940).
- <sup>8</sup> Becker v. Beir, 275 A.D. 146, 89 N.Y.S.2d 536 (4th Dep't 1949).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### C. Regulation and Offenses as to Speed; Slowing and Stopping

##### 2. Slowing and Stopping

## § 282. Duties to stop for school buses or public conveyances receiving or discharging passengers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(1\)](#), [5\(3\)](#), [6](#), [7](#), [10](#), [11](#), [119](#), [324](#), [329](#), [333](#)

### Trial Strategy

[Motorist's Liability for Injury to Child Going to or from School Bus](#), 12 Am. Jur. Proof of Facts 3d 169

It is commonly provided by statute that motorists must come to a stop when meeting or overtaking<sup>1</sup> a school bus which is stopped, with its red signal lights flashing<sup>2</sup> and side stop signal arm activated,<sup>3</sup> for the purpose of receiving or discharging school children.<sup>4</sup> Such statutes are mandatory,<sup>5</sup> and have been regarded as violated even where a motorist makes a right turn at an intersection away from the direction of a school bus which is stopped straddling the intersection.<sup>6</sup> A provision in such a statute exempting from its operation motor vehicles proceeding on a separate roadway does not apply where all that separates a vehicle from a stopped school bus is two double painted yellow lines differentiating the northbound lanes of a highway from its southbound lanes.<sup>7</sup>

A statute under which the defendant was convicted of passing a stopped school bus prohibited vehicles from passing even a portion of a stopped bus after turning from a roadway perpendicular to the roadway on which the bus is stopped; the potential for injury to schoolchildren trying to board a bus in the aforementioned scenario is equal to the danger posed in a scenario in which a vehicle passes the entire length of the stopped bus while traveling on the same roadway.<sup>8</sup>

Some statutes require a motorist approaching or passing a streetcar or motorbus, which has been stopped to allow passengers

to alight or embark, to slow down and, if necessary for the safety of the public, to come to a full stop.<sup>9</sup> Such a statute does not undertake to arbitrarily fix the speed to which a motorist should slow down, but does require the exercise of caution, and that the rate of speed be adapted to the situation.<sup>10</sup>

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#### Footnotes

- <sup>1</sup> [People v. Matysik](#), 363 Ill. App. 3d 1107, 301 Ill. Dec. 41, 845 N.E.2d 906 (3d Dist. 2006); [State v. Wolfram](#), 62 Ohio App. 3d 749, 577 N.E.2d 442, 69 Ed. Law Rep. 526 (12th Dist. Clermont County 1989).
- <sup>2</sup> [State v. Eakins](#), 720 N.W.2d 597 (Minn. Ct. App. 2006); [People v. Epstein](#), 164 Misc. 2d 957, 626 N.Y.S.2d 679, 100 Ed. Law Rep. 682 (N.Y. City Ct. 1995).  
Once the defendant encountered a stationary school bus with its amber lights flashing, the defendant had an obligation to stop at least 10 feet from the bus, for the purpose of protecting the safety of children, even though the bus driver had failed to immediately activate the red lights of the bus upon stopping. [Com. v. Schlegel](#), 577 Pa. 321, 845 A.2d 759 (2004).
- <sup>3</sup> [State v. Eakins](#), 720 N.W.2d 597 (Minn. Ct. App. 2006); [State v. Wolfram](#), 62 Ohio App. 3d 749, 577 N.E.2d 442, 69 Ed. Law Rep. 526 (12th Dist. Clermont County 1989); [Com. v. Dasilva](#), 440 Pa. Super. 291, 655 A.2d 568 (1995).
- <sup>4</sup> [People v. Epstein](#), 164 Misc. 2d 957, 626 N.Y.S.2d 679, 100 Ed. Law Rep. 682 (N.Y. City Ct. 1995); [J. Weingarten, Inc. v. Sanchez](#), 228 S.W.2d 303 (Tex. Civ. App. Galveston 1950); [Kellum v. Rounds](#), 195 Wash. 518, 81 P.2d 783 (1938).
- <sup>5</sup> [Fisher v. J. H. Sheridan Co.](#), 182 S.C. 316, 189 S.E. 356, 108 A.L.R. 981 (1936).
- <sup>6</sup> [People v. Matysik](#), 363 Ill. App. 3d 1107, 301 Ill. Dec. 41, 845 N.E.2d 906 (3d Dist. 2006).
- <sup>7</sup> [Com. v. Russell](#), 2001 PA Super 277, 784 A.2d 165, 159 Ed. Law Rep. 264 (2001).
- <sup>8</sup> [State v. Mourino](#), 2014 ME 131, 104 A.3d 893, 312 Ed. Law Rep. 822 (Me. 2014).
- <sup>9</sup> [Earl W. Baker & Co. v. Lagaly](#), 144 F.2d 344, 154 A.L.R. 1098 (C.C.A. 10th Cir. 1944); [Richards v. Miller North Broad Transit Co.](#), 96 N.H. 272, 74 A.2d 552 (1950).
- <sup>10</sup> [Hoelker v. American Press](#), 317 Mo. 64, 296 S.W. 1008 (1927).



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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way


[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [151](#), [154](#), [160\(4\)](#), [160\(6\)](#), [167\(3\)](#)

### A.L.R. Library

A.L.R. Index, Approaching Vehicle  
A.L.R. Index, Automobiles and Highway Traffic  
A.L.R. Index, Crossings  
A.L.R. Index, One-way Street  
A.L.R. Index, Right of Way  
A.L.R. Index, Traffic Offenses and Violations  
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A.L.R. Index, U-turn  
West's A.L.R. Digest, [Automobiles](#)  [151](#), [154](#), [160\(4\)](#), [160\(6\)](#), [167\(3\)](#)

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## 7A Am. Jur. 2d Automobiles § 283

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## V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

### D. Right of Way

#### 1. In General

## § 283. Right of way, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  154, 167(3)

Generally, the traffic rules controlling the right of way are designed to prevent accidents.<sup>1</sup> “Right of way” means the right of one vehicle to proceed ahead of another.<sup>2</sup> That is, the term may be defined as the right of one vehicle to proceed in a lawful manner in preference to another approaching under such circumstances of direction, speed, and proximity as to give rise to a danger of collision unless one vehicle grants precedence to the other.<sup>3</sup>

While in some jurisdictions the right of way is a wholly statutory concept,<sup>4</sup> and may be set forth in specific rules governing the right of way as prescribed in particular statutory provisions governing rules of the road,<sup>5</sup> or by city regulations where authorized by state statute,<sup>6</sup> it is otherwise a general rule that in the absence of a statute or ordinance governing the matter, a vehicle first entering an intersection is entitled to the right of way, and it is the duty of the driver of another vehicle approaching the intersection to proceed with sufficient care to permit the exercise of such right without danger of collision.<sup>7</sup>

An ordinance regulating the right of way as between motorists at street intersections is not necessarily void because of the fact that a statute also makes regulations as to such intersections, provided the ordinance is not in conflict with the statute.<sup>8</sup> Municipal ordinances regulating traffic at intersections may be given precedence over conflicting statutes, where, either by constitutional or statutory provisions, the municipality has been given exclusive jurisdiction over traffic regulation within its limits,<sup>9</sup> or jurisdiction over matters of right of way at intersections.<sup>10</sup> Unless municipalities are given express authority to regulate the right of way at street intersections, an ordinance respecting such matter which is in direct conflict with the statute concerning the right of way at highway or street intersections is of no effect.<sup>11</sup>

The fact that an operator of a motor vehicle does not know of regulations governing the right of way at street or highway intersections constitutes no excuse for failing to observe them.<sup>12</sup>

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Footnotes

- <sup>1</sup> Mullin v. Joy, 145 N.H. 96, 749 A.2d 826 (2000).
- <sup>2</sup> Saunders v. Baska, 397 S.W.3d 44 (Mo. Ct. App. W.D. 2013).
- <sup>3</sup> Burrows v. Jacobsen, 209 Neb. 778, 311 N.W.2d 880 (1981).
- <sup>4</sup> Betchkal v. Willis, 127 Wis. 2d 177, 378 N.W.2d 684 (1985).
- <sup>5</sup> Barrett v. Nwaba, 165 Md. App. 281, 885 A.2d 392 (2005) (referring to Maryland statutes prescribing specific right of way rules including the “Boulevard rule”).
- <sup>6</sup> Ferguson v. Iqbal, 33 A.D.3d 657, 823 N.Y.S.2d 180 (2d Dep’t 2006) (referring to New York City regulations).
- <sup>7</sup> Creech v. Blackwell, 298 S.W.2d 394 (Mo. 1957); Barret v. Alamito Dairy Co., 105 Neb. 658, 181 N.W. 550, 21 A.L.R. 966 (1921); Maxwell v. Kirkpatrick, 22 Tenn. App. 21, 116 S.W.2d 340 (1937).
- <sup>8</sup> Shipp v. Missouri Pac. Transp. Co., 197 Ark. 104, 122 S.W.2d 593 (1938).
- <sup>9</sup> City and County of Denver v. Henry, 95 Colo. 582, 38 P.2d 895 (1934).
- <sup>10</sup> Spence v. Carne, 40 Tenn. App. 580, 292 S.W.2d 438 (1954); Weismantle v. Petros, 124 W. Va. 180, 19 S.E.2d 594 (1942).
- <sup>11</sup> Constant v. Brown, 1941 OK 205, 189 Okla. 147, 114 P.2d 477 (1941).
- <sup>12</sup> Dodge v. Salinger, 126 Wash. 237, 217 P. 1014 (1923).

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## 7A Am. Jur. 2d Automobiles § 284

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way

##### 1. In General

## § 284. Scope of right of way

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  154, 167(3)

Having the right of way does not give a driver an absolute or unlimited privilege.<sup>1</sup> That is, the right of way is not absolute and all drivers, regardless of who has the right of way, have a duty to maintain a proper lookout and to use every precaution to avoid a collision.<sup>2</sup> While the driver with the right of way is entitled to anticipate that other vehicles will obey traffic laws that require them to yield,<sup>3</sup> a driver with the right of way may not blindly rely on that right,<sup>4</sup> but has a corresponding duty to use reasonable care to avoid a collision.<sup>5</sup> Thus, while the motorist with the right of way is the favored motorist,<sup>6</sup> and a favored motorist is entitled to assume other persons will obey the traffic laws, the favored motorist is required to take reasonable action to avoid a collision once the favored driver becomes aware that a disfavored driver will not properly yield.<sup>7</sup>

Principles regarding the right of way at intersections may apply to bicyclists as well as drivers of motor vehicles,<sup>8</sup> and, in particular, a bicyclist may have the right of way over a motorist.<sup>9</sup> The right of way between motorists and pedestrians may depend on particular circumstances, although statutes or ordinances may prescribe a right of way in favor of pedestrians at intersections, which provisions create a preferential but not an absolute right in their favor.<sup>10</sup> Statutes may also prescribe that when approaching or crossing a highway, the driver of a snowmobile or other all-terrain vehicle must yield the right of way to motor vehicles on highways.<sup>11</sup>

Since parking lot traffic lanes do not constitute highways as defined by the relevant statutory provisions, the right-of-way rules for highways do not necessarily apply to collisions occurring in parking lot traffic lanes.<sup>12</sup>

A driver with the right-of-way must use ordinary care not to injure another who has blocked the right-of-way and has created a perilous condition; that duty only arises, however, after the other driver or pedestrian has failed to yield and after the driver with the right-of-way has realized that there is a clearly dangerous condition in the right-of-way.<sup>13</sup>

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Footnotes

- <sup>1</sup> Barrett v. Nwaba, 165 Md. App. 281, 885 A.2d 392 (2005); Mari v. Delong, 62 Mass. App. Ct. 87, 814 N.E.2d 1171 (2004); Springer v. Bohling, 263 Neb. 802, 643 N.W.2d 386 (2002).
- <sup>2</sup> Davis v. Schneider Nat., Inc., 2013 Ark. App. 737, 431 S.W.3d 321 (2013).
- <sup>3</sup> McGraw v. Glowacki, 303 A.D.2d 968, 758 N.Y.S.2d 224 (4th Dep't 2003).
- <sup>4</sup> Contreras v. Fitzgerald, 2002 MT 208, 311 Mont. 257, 54 P.3d 983 (2002).
- <sup>5</sup> Mateiasevici v. Daccordo, 34 A.D.3d 651, 825 N.Y.S.2d 502 (2d Dep't 2006).
- <sup>6</sup> Rochon v. Lafayette Airport Com'n, 888 So. 2d 1106 (La. Ct. App. 3d Cir. 2004).
- <sup>7</sup> Caldwell v. Washington State Dept. of Transp., 123 Wash. App. 693, 96 P.3d 407 (Div. 1 2004).
- <sup>8</sup> Springer v. Bohling, 263 Neb. 802, 643 N.W.2d 386 (2002).
- <sup>9</sup> Springer v. Bohling, 259 Neb. 71, 607 N.W.2d 836 (2000); Mullin v. Joy, 145 N.H. 96, 749 A.2d 826 (2000).
- <sup>10</sup> § 301.
- <sup>11</sup> State v. Knybel, 281 Conn. 707, 916 A.2d 816 (2007) (referring to state statutory provisions governing the operation of snowmobiles and all-terrain vehicles).
- <sup>12</sup> Marsico v. DiBileo, 2002 PA Super 101, 796 A.2d 997 (2002).
- <sup>13</sup> Neu v. Estate of Nussbaum, 2015-Ohio-159, 27 N.E.3d 906 (Ohio Ct. App. 12th Dist. Butler County 2015).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration


#### D. Right of Way

##### 2. Right of Way at Intersections

## § 285. Right of way at intersections, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  154

### Forms

Forms regarding pedestrians, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic  
[\[Westlaw®\(r\) Search Query\]](#)

Generally the motor vehicle on a favored road has the right of way against a vehicle on an intersecting unfavored road;<sup>1</sup> a motorist traveling on a high-speed multilane highway, for example, is not required to anticipate that a motorist entering the highway will not yield the right of way.<sup>2</sup> However, statutes dealing specifically with the rights and obligations of vehicles at intersections controlled by a regulatory device supersede the more general right-of-way rules.<sup>3</sup> Particular intersections are often controlled by a traffic regulatory device pursuant to which the right of way is prescribed by statute,<sup>4</sup> including such traffic regulatory devices as a light or signal,<sup>5</sup> a stop sign,<sup>6</sup> or a yield sign.<sup>7</sup>

Until the motorist has complied with a traffic control device controlling an intersection, such as a stop sign, a motorist proceeding into an intersection does not have the benefit of the general rule governing the right of way at intersections;<sup>8</sup> that is, the rule that if two or more motorists enter an intersection at the same time, the motorist on the right has the right of way.<sup>9</sup> Once a driver has complied with the regulatory device, such as diligently looking for oncoming traffic after stopping for a flashing red light, the driver may gain the right of way to proceed through the intersection.<sup>10</sup> A driver faced with a red light whose entry into the intersection is not lawful, however, may not preempt an intersection.<sup>11</sup>

Additionally, a vehicle approaching an intersection must ordinarily yield the right-of-way to a vehicle already in the intersection,<sup>12</sup> although vehicles making left turns at an intersection are required to yield to oncoming traffic, until the oncoming vehicle has proceeded through the intersection, including yielding to vehicles which have signaled an intent to turn right.<sup>13</sup> Moreover, a statute obligating drivers approaching an intersection to yield the right of way to a vehicle that has entered the intersection from another direction does not apply where the intersection is controlled by a stop sign.<sup>14</sup>

Regulations governing the right of way at intersections contemplate a situation where the vehicles are being operated in a lawful manner and may be considered inapplicable when one or both are being operated in an unlawful manner.<sup>15</sup> For example, the regulations contemplate that the motorist who has the right of way is proceeding in a lawful manner as to speed.<sup>16</sup> A motorist does not necessarily forfeit a right of way conferred upon the motorist by positive legislative enactment merely because the motorist is not altogether free from negligence.<sup>17</sup>

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#### Footnotes

- <sup>1</sup> [Brendel v. Ellis](#), 129 Md. App. 309, 742 A.2d 1 (1999).  
As to effect of the right of way at intersections on civil liability, see §§ 771, 772.
- <sup>2</sup> [Loveday v. Travelers Ins. Co.](#), 585 So. 2d 597 (La. Ct. App. 3d Cir. 1991), writ denied, 590 So. 2d 65 (La. 1991).
- <sup>3</sup> [Le Claire v. Pratt](#), 270 A.D.2d 612, 704 N.Y.S.2d 354 (3d Dep't 2000) (stop sign).
- <sup>4</sup> [Batal v. Associated Universities, Inc.](#), 293 A.D.2d 558, 741 N.Y.S.2d 551 (2d Dep't 2002).
- <sup>5</sup> [Travis v. Collett](#), 218 Minn. 592, 17 N.W.2d 68 (1944); [Booth v. City of Rochester](#), 258 A.D. 849, 15 N.Y.S.2d 945 (4th Dep't 1939).  
For full discussion of the right of way in intersections controlled by traffic lights, see § 290.
- <sup>6</sup> [Shedlock v. Marshall](#), 186 Md. 218, 46 A.2d 349 (1946); [Perez v. Paljevic](#), 31 A.D.3d 520, 818 N.Y.S.2d 581 (2d Dep't 2006).  
As to the nature of the duty to stop at stop signs, see § 241.
- <sup>7</sup> [Daugharthy v. Bennett](#), 207 Kan. 728, 486 P.2d 845 (1971); [Schaetty v. Kimberlin](#), 374 S.W.2d 70 (Mo. 1964).
- <sup>8</sup> [Anthony v. Jancsics](#), 2001 Mass. App. Div. 137, 2001 WL 705723 (2001).
- <sup>9</sup> [Canane v. Dandini](#), 355 Mass. 72, 242 N.E.2d 854 (1968).  
As to the rule governing vehicles entering to the right in an intersection, see § 287.
- <sup>10</sup> [Presswood v. Welsh](#), 271 Ga. App. 459, 610 S.E.2d 113 (2005).
- <sup>11</sup> [State Farm Mut. Auto. Ins. Co. v. Little](#), 794 So. 2d 927 (La. Ct. App. 2d Cir. 2001).
- <sup>12</sup> [Creech v. Blackwell](#), 298 S.W.2d 394 (Mo. 1957) (vehicles approaching an intersection generally must yield the right of way to the first vehicle to enter the intersection); [Schiskie v. Fernan](#), 277 A.D.2d 441, 716 N.Y.S.2d 702 (2d Dep't 2000).
- <sup>13</sup> [Daniel v. Smith](#), 266 Ga. App. 637, 597 S.E.2d 432 (2004).
- <sup>14</sup> [Le Claire v. Pratt](#), 270 A.D.2d 612, 704 N.Y.S.2d 354 (3d Dep't 2000).
- <sup>15</sup> [Greenfeld v. Hook](#), 177 Md. 116, 8 A.2d 888, 136 A.L.R. 1485 (1939); [Morris v. Bloomgren](#), 127 Ohio St. 147, 187 N.E. 2, 89 A.L.R. 831 (1933).
- <sup>16</sup> [Froemming v. Spokane City Lines](#), 71 Wash. 2d 265, 427 P.2d 1003 (1967).
- <sup>17</sup> [Cox v. Hennis Freight Lines](#), 236 N.C. 72, 72 S.E.2d 25 (1952).

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## 7A Am. Jur. 2d Automobiles § 286

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way

##### 2. Right of Way at Intersections

## § 286. What constitutes an “intersection”

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  154

An “intersection” within the meaning of statutes or ordinances regulating traffic and granting a right of way is generally held to arise from the meeting of one street with another at an angle, although one of the streets stops at and does not cross the other.<sup>1</sup> The actual intersection is the space of the intersecting streets or roadways common to both the ways as determined by a continuation of the curb or similar lines,<sup>2</sup> and the center of the intersection is the point where the center line of one street or highway meets the center line of the other, both lines being drawn parallel to and halfway between the curbs and projected to the point of meeting.<sup>3</sup>

A road or street crossing a traffic circle constitutes an intersection within the meaning of a statute giving the right of way to vehicles entering an intersection from the right.<sup>4</sup> In the absence of a statute or ordinance specifically governing the case, where a divided street or highway is intersected by another thoroughfare, it may become in effect two streets or highways within the meaning of a statute fixing the right of way at intersections,<sup>5</sup> but the statutory definition is controlling, and some prescribe an intersection relative to the prolongation of each street's lateral curb line, or if none, then the lateral boundary lines of the intersecting streets, pursuant to which a roadway crossing a divided highway may be deemed to constitute one intersection, not two.<sup>6</sup>

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#### Footnotes

<sup>1</sup> [Pangborn v. John Widdicomb Co.](#), 223 Mich. 181, 193 N.W. 817, 31 A.L.R. 485 (1923); [Maxwell v. Kirkpatrick](#), 22 Tenn. App. 21, 116 S.W.2d 340 (1937); [Mapp v. Holland](#), 138 Va. 519, 122 S.E. 430, 37 A.L.R. 478 (1924). As to right of way relative to vehicle emerging from private roads or driveways, see § 289.

- <sup>2</sup> Creech v. Blackwell, 298 S.W.2d 394 (Mo. 1957); W.U. Tel. Co. v. Dickson, 27 Tenn. App. 752, 173 S.W.2d 714 (1941).
- <sup>3</sup> Stewart v. Olson, 188 Wis. 487, 206 N.W. 909, 44 A.L.R. 1292 (1926).
- <sup>4</sup> Wenski v. Kabitzke, 257 S.W.2d 153 (Tex. Civ. App. Austin 1953).
- <sup>5</sup> Nelson v. Rumsey, 5 A.D.2d 460, 172 N.Y.S.2d 696 (3d Dep’t 1958), judgment aff’d, 5 N.Y.2d 967, 184 N.Y.S.2d 840, 157 N.E.2d 717 (1959).
- <sup>6</sup> People v. Silver, 302 Mich. 359, 4 N.W.2d 687 (1942); Brown v. Wallace, 184 Va. 570, 35 S.E.2d 793 (1945).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way

##### 2. Right of Way at Intersections

## § 287. Vehicles or traffic approaching from the right as having right of way

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  154

The vehicle approaching a street or highway intersection from the right is commonly given the right of way by statute,<sup>1</sup> subject to the right of way pursuant to a traffic regulatory device such as a stop sign.<sup>2</sup> While some cases have characterized the right of way of a vehicle approaching an intersection in a lawful manner from the right as an absolute right,<sup>3</sup> other cases state that the right of way given to a vehicle approaching from the right is not an absolute right or privilege.<sup>4</sup> In particular, a driver who possesses the right of way in an intersection must nonetheless exercise reasonable care,<sup>5</sup> since the right of way at an intersection is a qualified, not absolute right to proceed through the intersection,<sup>6</sup> subject to other factors, such as the distance of the vehicles from, or their relative priority in approaching, an intersection.<sup>7</sup>

A motorist traveling the wrong way on a one-way street is not entitled to the protection afforded by a statute which provides that motorists approaching an intersection must grant the right of way to motorists approaching from the right.<sup>8</sup>

A statute giving the right of way to vehicles approaching an intersection from the right over those approaching from the left is applicable to a situation in which two vehicles approach an intersection at approximately the same time from directly opposite directions on the same street and one of them attempts to make a left-hand turn into the intersecting street, so as to put the other upon his or her right, the vehicle making the turn being under the duty of yielding to the other.<sup>9</sup> This is true even though the street into which the turn is attempted merely enters, but does not cross, the street along which the two vehicles are traveling.<sup>10</sup>

Under a statute giving the right of way to vehicles approaching an intersection from the right, a vehicle approaching an intersection from the left is under the duty of yielding to a vehicle approaching from the right which reaches the intersection at the same time or slightly in advance of the vehicle on the left, intending to make a right-hand turn into the intersecting street to proceed in the same direction as the vehicle approaching from the left,<sup>11</sup> or intending to make a left-hand turn into the intersecting street.<sup>12</sup>

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Footnotes

- <sup>1</sup> Le Claire v. Pratt, 270 A.D.2d 612, 704 N.Y.S.2d 354 (3d Dep't 2000).
- <sup>2</sup> Le Claire v. Pratt, 270 A.D.2d 612, 704 N.Y.S.2d 354 (3d Dep't 2000).
- <sup>3</sup> Morris v. Bloomgren, 127 Ohio St. 147, 187 N.E. 2, 89 A.L.R. 831 (1933).
- <sup>4</sup> Kerr v. Hayes, 250 Mich. 19, 229 N.W. 430 (1930).
- <sup>5</sup> Mari v. Delong, 62 Mass. App. Ct. 87, 814 N.E.2d 1171 (2004); Springer v. Bohling, 263 Neb. 802, 643 N.W.2d 386 (2002).
- <sup>6</sup> Springer v. Bohling, 263 Neb. 802, 643 N.W.2d 386 (2002).
- <sup>7</sup> § 288.
- <sup>8</sup> Widronak v. Lord, 269 Mass. 238, 168 N.E. 799 (1929).
- <sup>9</sup> Webber v. Park Auto Transp. Co., 138 Wash. 325, 244 P. 718, 47 A.L.R. 590 (1926).
- <sup>10</sup> McCarthy v. Beckwith, 246 Mass. 409, 141 N.E. 126 (1923).
- <sup>11</sup> Schaff v. Nelson, 285 S.W. 1036 (Mo. Ct. App. 1926).
- <sup>12</sup> Gilbert v. Wittenberg, 189 Wis. 181, 207 N.W. 264 (1926).

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## 7A Am. Jur. 2d Automobiles § 288

American Jurisprudence, Second Edition | May 2021 Update

### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way

##### 2. Right of Way at Intersections

## § 288. Right of way as affected by relative distance from, or time of reaching, intersection

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  154

The right of way accorded to vehicles approaching an intersection is not an absolute right or privilege, but is subject to, and affected by, the relative distance of the vehicles from the point of intersection.<sup>1</sup> A statute or ordinance giving the right of way to the vehicle approaching an intersection from the right, is generally considered to be applicable only when the vehicles are approaching an intersection so nearly at the same time, and at such distances and speed, that if each proceeds without regard to the other a collision is likely to occur,<sup>2</sup> and thus is not applicable when one of the vehicles arrives at the intersection substantially in advance of the other.<sup>3</sup>

Whether two vehicles are considered to be approaching an intersection at approximately the same time does not necessarily depend upon which vehicle enters the intersection first, but upon the imminence of collision when the relative distances and speeds of the two vehicles are considered.<sup>4</sup>

The rule is that two vehicles are approaching an intersection at approximately the same time, within the meaning of a statute giving the right of way to the one approaching from the right, where it would appear to a person of ordinary prudence, in the position of a driver of a vehicle approaching an intersection from the left of another vehicle, that if the two vehicles continued on their respective courses, at the same rates of speed, a collision would be likely to occur.<sup>5</sup> Thus, whether or not, in the circumstances, the driver on the left might reach the intersection first,<sup>6</sup> where the relative positions of two vehicles approaching an intersection indicate to the driver approaching from the left a reasonable probability of collision if the vehicles continue on their respective courses at the same rates of speed, the right-of-way rule favoring the vehicle approaching from the right requires that the driver of the vehicle approaching from the left give the right of precedence to the driver of the vehicle on his or her right.<sup>7</sup> The driver of a vehicle approaching an intersection must yield the right of way to a vehicle approaching from the right unless the driver is so far in advance of the other as to afford a reasonable opportunity to cross the intersection safely.<sup>8</sup>

Under a statute requiring the driver on the left to yield the right of way to the driver on the right when two vehicles approach an intersection at approximately the same time, the driver on the left is not required to come to a dead stop, but the driver must approach the intersection with the car under control so that the driver can yield the right of way to a vehicle within the danger zone on the driver's right.<sup>9</sup> The driver need not wait until there is no other vehicle on the driver's right in sight before proceeding into the intersection, but only until it is reasonably safe to proceed.<sup>10</sup> Accordingly, despite the statutory precedence generally given to vehicles approaching an intersection from the right, where a vehicle approaching an intersection from the left has actually entered the intersection, and has occupied it, the vehicle approaching from the right is, generally speaking, under a duty to yield the right of way to such vehicle.<sup>11</sup> Where, in the absence of any positive requirement as to stopping, such as a stop sign,<sup>12</sup> the driver of a vehicle approaching an intersection finds no one approaching from the right within such distance and under such circumstances so as to reasonably indicate danger of collision, the driver is entitled to proceed across the intersection as a matter of right.<sup>13</sup>

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#### Footnotes

- <sup>1</sup> Alexander v. Sullivan, 334 Ill. App. 42, 78 N.E.2d 333 (3d Dist. 1948); Włodkowski v. Yerkaitis, 190 Md. 128, 57 A.2d 792 (1948); Fester v. George, 71 S.D. 424, 25 N.W.2d 455 (1946).
- <sup>2</sup> Hall v. Wallace, 59 Ariz. 503, 130 P.2d 36 (1942); Reynolds v. Madison Bus Co., 250 Wis. 294, 26 N.W.2d 653 (1947).
- <sup>3</sup> Hall v. Wallace, 59 Ariz. 503, 130 P.2d 36 (1942); Partridge v. Enterprise Transfer Co., 307 Ill. App. 386, 30 N.E.2d 947 (1st Dist. 1940); Reynolds v. Madison Bus Co., 250 Wis. 294, 26 N.W.2d 653 (1947).
- <sup>4</sup> Ingeneri v. Makris, 131 Conn. 77, 37 A.2d 865 (1944); Wilmes v. Mihelich, 223 Minn. 139, 25 N.W.2d 833 (1947); Bennett v. Stephenson, 237 N.C. 377, 75 S.E.2d 147 (1953).
- <sup>5</sup> Krauss v. Crawford, 133 Conn. 430, 52 A.2d 1 (1947); Moore v. Kujath, 225 Minn. 107, 29 N.W.2d 883, 175 A.L.R. 1007 (1947).
- <sup>6</sup> Rode v. Adley Express Co., 130 Conn. 274, 33 A.2d 329 (1943); Knox v. Abrams, 132 Or. 500, 286 P. 517 (1930); Affelgren v. Kinka, 351 Pa. 99, 40 A.2d 418 (1945).
- <sup>7</sup> Thomasson v. Burlington Transp. Co., 128 F.2d 355 (C.C.A. 10th Cir. 1942) (applying Colorado law); Weimer v. Brock-Hall Dairy Co., 131 Conn. 361, 40 A.2d 277 (1944); Włodkowski v. Yerkaitis, 190 Md. 128, 57 A.2d 792 (1948); Moore v. Kujath, 225 Minn. 107, 29 N.W.2d 883, 175 A.L.R. 1007 (1947); Gibbs v. Almstrom, 145 Minn. 35, 176 N.W. 173, 11 A.L.R. 227 (1920).
- <sup>8</sup> Affelgren v. Kinka, 351 Pa. 99, 40 A.2d 418 (1945).
- <sup>9</sup> Moore v. Kujath, 225 Minn. 107, 29 N.W.2d 883, 175 A.L.R. 1007 (1947).
- <sup>10</sup> Metzger v. Cushman's Sons, 243 N.Y. 118, 152 N.E. 695 (1926).
- <sup>11</sup> Mattfeld v. Nester, 226 Minn. 106, 32 N.W.2d 291, 3 A.L.R.2d 909 (1948); Bennett v. Stephenson, 237 N.C. 377, 75 S.E.2d 147 (1953).
- <sup>12</sup> § 285.
- <sup>13</sup> Bentley v. Olson, 324 Ill. App. 281, 58 N.E.2d 316 (1st Dist. 1944); Moore v. Kujath, 225 Minn. 107, 29 N.W.2d 883, 175 A.L.R. 1007 (1947).



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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way

##### 2. Right of Way at Intersections

## § 289. Vehicles emerging from private road or driveway

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  154, 167(3)

The intersection of public thoroughfares with private ways does not come within the terms of a statute which, by language or definition, relates to the intersection of “highways,” or which defines the intersecting way as any “public highway, street, avenue, road, alley, park, or parkway,”<sup>1</sup> and statutes and ordinances prescribing the right of way for vehicles at street or highway intersections do not apply in favor of vehicles entering the public way from a private road or driveway.<sup>2</sup> Under a statutory provision defining a private road or driveway, a residential driveway is not private property that is open to public access.<sup>3</sup>

The general rule is that vehicles entering a public way from a private road or driveway must yield the right of way to vehicles moving upon the public way,<sup>4</sup> and must not proceed into the public way into the path of vehicles thereon unless in the exercise of reasonable care and caution the entry into the public way can be made in safety.<sup>5</sup>

This duty may be imposed by statute,<sup>6</sup> and may be part of the rule governing the right of way afforded motorists on main thoroughfares,<sup>7</sup> known as the “Boulevard rule,”<sup>8</sup> which is intended to promote the free flow of traffic on main thoroughfares by minimizing the amount of interruptions or delays, and ensuring the safety of the drivers, thus burdening drivers attempting to cross a major thoroughfare with a strict duty to yield the right-of-way to the driver on the favored road.<sup>9</sup>

The driver of the preferred vehicle has the right to assume, although not with implicit impunity, that the other driver about to enter the preferred vehicle driver’s path of travel from a private road or driveway will yield to the preferred vehicle driver, although there remains the duty at all times to exercise reasonable care to avoid collision with other vehicles, and the driver of the preferred vehicle cannot ignore their presence or possible presence.<sup>10</sup>

A statute, providing that the driver of a vehicle shall stop at the entrance to a through highway and shall yield the right-of-way to other vehicles which have entered the intersection, does not require the driver of a vehicle who has already



entered onto an intersection with a through highway to yield the right-of-way to an approaching vehicle which has neither entered the intersection nor approached so closely thereto from said through highway as to constitute an immediate hazard, and this is likewise true as to a vehicle about to enter or cross a through highway from a private road or driveway.<sup>11</sup> Moreover, a defendant was not subject to a statute or traffic ordinance requiring turn signaling when he left a private parking lot, and thus, his failure to signal did not provide the officer with probable cause to stop the vehicle for a violation of the statute or ordinance; neither the statute nor ordinance applied to the defendant's actions because the statute required the vehicle to be located on a "state highway," while the ordinance required the vehicle to be located on an "intersection" or "roadway" prior to making a turn.<sup>12</sup>

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#### Footnotes

- <sup>1</sup> Laing v. Perryman, 31 Ga. App. 239, 120 S.E. 646 (1923).
- <sup>2</sup> Snibbe v. Robinson, 151 Md. 658, 135 A. 838, 50 A.L.R. 280 (1927).
- <sup>3</sup> State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011).
- <sup>4</sup> Barrett v. Nwaba, 165 Md. App. 281, 885 A.2d 392 (2005); Johnson v. Bush, 418 S.W.2d 601 (Mo. Ct. App. 1967).
- <sup>5</sup> Manuel v. Mouton, 341 So. 2d 79 (La. Ct. App. 3d Cir. 1976); Hastings v. Soule, 118 Vt. 105, 100 A.2d 577 (1953).
- <sup>6</sup> Siler v. Williford, 350 S.W.2d 704 (Ky. 1961); Baxter v. Rounsaville, 193 So. 2d 735 (Miss. 1967); County of Dallas v. Poston, 104 S.W.3d 719 (Tex. App. Dallas 2003).
- <sup>7</sup> Poteet v. Sauter, 136 Md. App. 383, 766 A.2d 150 (2001).
- <sup>8</sup> Barrett v. Nwaba, 165 Md. App. 281, 885 A.2d 392 (2005).
- <sup>9</sup> Poteet v. Sauter, 136 Md. App. 383, 766 A.2d 150 (2001).
- <sup>10</sup> Thomas v. Dahl, 293 Ky. 808, 170 S.W.2d 337 (1943).
- <sup>11</sup> Moreno v. TLSL, Inc., 187 So. 3d 127 (Miss. 2016).
- <sup>12</sup> State v. Loyd, 326 S.W.3d 908 (Mo. Ct. App. W.D. 2010).

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## 7A Am. Jur. 2d Automobiles § 290

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way


##### 3. Effect of Traffic Lights, Signs, Signals, and Markings

###### a. Traffic Lights or Signals

## § 290. Traffic lights or signals, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [151](#), [154](#)

Where a pedestrian and a motorist, or two motorists, approach a street or highway intersection from different angles at a time when the traffic light or signal, or police officer's gesture or signal, is in favor of one and against the other, the one faced with a favorable signal has the right of way.<sup>1</sup> The right of way thus afforded is generally regarded as superior to the rights conferred by such rules of the road as those giving to a vehicle first entering an intersection or entering it from the right the right of way over the crossing.<sup>2</sup> A driver having a red flashing signal must yield the right of way to a driver having a yellow flashing signal, and the latter may assume the other vehicle will honor the right of way until the driver sees, or should see, that the other driver will not do so.<sup>3</sup>

While some courts refer to the right of way accorded one proceeding with a favorable traffic signal as an absolute one,<sup>4</sup> generally the right of way is not an absolute one,<sup>5</sup> and the courts recognize that a favored motorist or pedestrian must exercise reasonable care under the circumstances.<sup>6</sup> Thus, a driver may gain the right of way to proceed through an intersection if, after stopping at a flashing red light, the driver diligently looks for oncoming traffic and prudently determines it is safe to proceed.<sup>7</sup>

Generally, where a pedestrian leaves the curb to cross a street intersection at a time when the traffic light or signal, or an officer's signal, is in the pedestrian's favor, the pedestrian's right of way over vehicular traffic proceeding along the street the pedestrian is crossing continues until the pedestrian reaches the opposite curb, despite an intervening change of signal which operates to permit such traffic to enter the intersection.<sup>8</sup>

The same view is generally held with respect to the right of way of a motorist entering an intersection with a green light, in regard to other vehicles.<sup>9</sup> Although a driver facing a steady green light is entitled to proceed, such driver has a duty to yield the right-of-way to pedestrians lawfully within a crosswalk.<sup>10</sup>

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Footnotes

- <sup>1</sup> [Travis v. Collett](#), 218 Minn. 592, 17 N.W.2d 68 (1944); [Kummerlen v. Pustilnik](#), 353 Pa. 327, 45 A.2d 27 (1946).  
As to effect of traffic regulatory devices at intersections on civil liability, see §§ 780 to 798.
- <sup>2</sup> [Creech v. Blackwell](#), 298 S.W.2d 394 (Mo. 1957); [Spence v. Carne](#), 40 Tenn. App. 580, 292 S.W.2d 438 (1954).
- <sup>3</sup> [Lacombe v. Buras](#), 778 So. 2d 1181 (La. Ct. App. 3d Cir. 2001).  
As to effect of a flashing yellow light on the right of way, generally, see § 295.
- <sup>4</sup> [Juergens v. Bell Distributing](#), 135 Ohio St. 335, 14 Ohio Op. 227, 21 N.E.2d 90 (1939).
- <sup>5</sup> [Cox v. Cooper](#), 510 S.W.2d 530 (Ky. 1974); [Gray v. Felts](#), 241 Miss. 599, 131 So. 2d 454 (1961); [Altsman v. Kelly](#), 336 Pa. 481, 9 A.2d 423 (1939); [Wilson v. Koch](#), 241 Wis. 594, 6 N.W.2d 659 (1942).
- <sup>6</sup> § 470.
- <sup>7</sup> [Presswood v. Welsh](#), 271 Ga. App. 459, 610 S.E.2d 113 (2005).
- <sup>8</sup> [Herbold v. Ford Motor Co.](#), 310 Ky. 697, 221 S.W.2d 646 (1949); [Ballard v. Yellow Cab Co.](#), 20 Wash. 2d 67, 145 P.2d 1019 (1944).
- <sup>9</sup> [Styskal v. Brickey](#), 158 Neb. 208, 62 N.W.2d 854 (1954); [Laurinat v. Giery](#), 157 Neb. 681, 61 N.W.2d 251 (1953).
- <sup>10</sup> [Benn v. New York Presbyterian Hosp.](#), 120 A.D.3d 453, 990 N.Y.S.2d 584 (2d Dep't 2014).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way


##### 3. Effect of Traffic Lights, Signs, Signals, and Markings

###### a. Traffic Lights or Signals

## § 291. Right of way of vehicles making turns

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [151](#), [154](#)

A driver intending to turn left in an intersection, across the path of a driver approaching from the opposite direction, must yield the right of way until such time as the turn can be made safely; the fact that this does not constitute an absolute right or absolve such driver from the duty to exercise reasonable care does not mean that the driver turning left across the path of a driver proceeding straight through acquires a right of way by entering the intersection first.<sup>1</sup> The right of way of the vehicle proceeding straight through the intersection is not affected by the vehicle passing another vehicle on the right; the left turning vehicle must still yield the right of way to the vehicle traveling in the opposite direction.<sup>2</sup> A driver is entitled to anticipate that the driver in an oncoming vehicle will obey the traffic law and not turn left into the driver's path.<sup>3</sup> In some instances, pursuant to the deception doctrine, which is limited to those situations where the oncoming driver's deception induces the driver of a left turning vehicle to believe the turn may be made safely, the oncoming driver may be precluded from relying on the right-of-way rule regarding left turning vehicles.<sup>4</sup>

Otherwise, where a vehicle and a pedestrian, or two vehicles, are crossing an intersection on the same street but in opposite directions so that when the light or other signal is favorable for one it is favorable for the other, it is usually held, frequently as the result of applicable statutory or administrative regulations, that if the vehicle, or one of them, desires to turn into the intersecting street, its driver must yield the right of way to the pedestrian or the nonturning vehicle,<sup>5</sup> particularly where the turning motorist fails to signal an intention to turn as required by statute,<sup>6</sup> although the right of way so accorded does not relieve its holder of the duty of exercising ordinary care.<sup>7</sup>

The requirement that a turning vehicle make a signal applies when other vehicles may be affected by a turn, even when no accident is likely to occur as the result of the driver's failure to give a proper signal.<sup>8</sup> With respect to the right of way between a turning vehicle and a pedestrian, both of which, with a favorable signal, entered the intersection on the same street and from

the same direction, the pedestrian has been variously held to have the right of way<sup>9</sup> or not to have the right of way,<sup>10</sup> or the right of way has been held dependent upon the particular circumstances shown.<sup>11</sup>

A pedestrian or bicyclist in the crosswalk has the right of way over a vehicle making a right-hand turn on a red light.<sup>12</sup>

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#### Footnotes

- <sup>1</sup> [Mari v. Delong](#), 62 Mass. App. Ct. 87, 814 N.E.2d 1171 (2004).
- <sup>2</sup> [Crosby v. McWilliam](#), 2003-Ohio-6063, 2003 WL 22681324 (Ohio Ct. App. 2d Dist. Montgomery County 2003).
- <sup>3</sup> [Agin v. Rehfeldt](#), 284 A.D.2d 352, 726 N.Y.S.2d 131 (2d Dep't 2001).
- <sup>4</sup> [State v. Souther](#), 100 Wash. App. 701, 998 P.2d 350 (Div. 1 2000) (deception must be tantamount to entrapment, of such a marked character as to lure a reasonably prudent driver into the illusion that there is a fair margin of safety in proceeding).
- <sup>5</sup> [Hoffberg v. Epstein](#), 130 Conn. 613, 36 A.2d 388 (1944); [Indianapolis Rys. v. Boyd](#), 222 Ind. 481, 53 N.E.2d 762 (1944).
- <sup>6</sup> [Samuelson v. McClelland](#), 127 Pa. Super. 209, 193 A. 385 (1937).
- <sup>7</sup> § 470.
- <sup>8</sup> [Woods v. State](#), 175 So. 3d 579 (Miss. Ct. App. 2015).
- <sup>9</sup> [Gearhart v. Des Moines R. Co.](#), 237 Iowa 213, 21 N.W.2d 569 (1946).
- <sup>10</sup> [Schaffer v. Gambetta](#), 261 A.D. 132, 24 N.Y.S.2d 674 (1st Dep't 1941), judgment aff'd, 287 N.Y. 796, 40 N.E.2d 654 (1942).
- <sup>11</sup> [Panitz v. Webb](#), 149 Md. 75, 130 A. 913 (1925).  
For full discussion of right of way as between motorists and pedestrians, including relative to pedestrians crossing roadways, see §§ 301 to 304.
- <sup>12</sup> [Doody v. Gottshall](#), 67 A.D.3d 1347, 891 N.Y.S.2d 216 (4th Dep't 2009); [Nish v. Schaefer](#), 2006 WY 85, 138 P.3d 1134 (Wyo. 2006).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way

##### 3. Effect of Traffic Lights, Signs, Signals, and Markings

###### a. Traffic Lights or Signals

## § 292. Right of way of emergency vehicles

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  154

### A.L.R. Library

[Construction and Application of Statutory Provision Requiring Motorists to Yield Right-of-Way to Emergency Vehicle, 87 A.L.R.5th 1](#)

[Liability arising from accidents involving police vehicles, 83 A.L.R.2d 383](#)

[Liability for personal injury or damage from operation of fire department vehicle, 82 A.L.R.2d 312](#)

### Trial Strategy

[Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203 §§ 5 to 16](#)

**Forms**

Forms regarding emergency vehicles, generally, see Am. Jur. Pleading and Practice, Automobiles and Highway Traffic  
[\[Westlaw®\(r\) Search Query\]](#)

The right of way at intersections, given by statute or ordinance to emergency vehicles answering emergency calls, has, in view of the manifest purpose of such a right of way, been held to exist as against red traffic lights,<sup>1</sup> even where there is no specific exemption with regard to traffic lights or signals in the right-of-way statute or ordinance.<sup>2</sup> However, the duty to yield the right of way to an emergency vehicle arises only when a motorist observes or hears, or under the circumstances should have observed or heard, the audible and visual warnings of such a vehicle,<sup>3</sup> and there is a duty imposed upon the drivers of emergency vehicles to slow down as necessary for safety to traffic and to proceed cautiously past such signal with due regard for the safety of all persons using the street or highway.<sup>4</sup> Thus, for example, the driver of an emergency fire vehicle driving to a fire must keep in mind the speed at which the vehicle is traveling and the probable consequences of a disregard of traffic signals, and while the driver has a right to assume in the first instance that the operators of other vehicles will respect the emergency vehicle's right of way at an intersection, the emergency vehicle driver is warned by a red light that other vehicles on the intersecting way are invited to proceed by a green light; the measure of their responsibility is due care under all the circumstances.<sup>5</sup> This does not impose an absolute duty upon emergency vehicles to slow down, but only a duty to slow down as the circumstances require.<sup>6</sup>

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**Footnotes**

- <sup>1</sup> [Travis v. Collett](#), 218 Minn. 592, 17 N.W.2d 68 (1944); [Politte v. Miller](#), 301 S.W.2d 839 (Mo. Ct. App. 1957). As to right of way of emergency vehicles, generally, see § 300.
- <sup>2</sup> [Russell v. Nadeau](#), 139 Me. 286, 29 A.2d 916 (1943) (holding that fire apparatus and other enumerated emergency vehicles when operated in response to calls have the right of way in the streets and other public ways, and that both reason and authority dictate that the exemption should be extended to regulations controlling the movement of traffic by signal lights or other means or devices).
- <sup>3</sup> [Butcher v. City of Monroe](#), 737 So. 2d 189 (La. Ct. App. 2d Cir. 1999), writ denied, 747 So. 2d 566 (La. 1999).
- <sup>4</sup> [Politte v. Miller](#), 301 S.W.2d 839 (Mo. Ct. App. 1957); [Parton v. Weilnau](#), 169 Ohio St. 145, 8 Ohio Op. 2d 134, 158 N.E.2d 719 (1959).
- <sup>5</sup> [Russell v. Nadeau](#), 139 Me. 286, 29 A.2d 916 (1943).
- <sup>6</sup> [Markle v. Haase](#), 245 Minn. 520, 73 N.W.2d 362 (1955).

## 7A Am. Jur. 2d Automobiles § 293

American Jurisprudence, Second Edition | May 2021 Update

### Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way


#### 3. Effect of Traffic Lights, Signs, Signals, and Markings

##### b. Signs and Other Markings

## § 293. Stop signs

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  154

Ordinarily, a motorist proceeding along a through street or highway protected by stop signs has the right of way at intersections over motorists on subordinate thoroughfares,<sup>1</sup> who must yield to motorists on the favored thoroughfare,<sup>2</sup> consistent with the principle that a motor vehicle on a favored road has the right of way against a vehicle on an intersecting unfavored road.<sup>3</sup> The duty of yielding the right of way is coordinate with the duty of stopping at the sign.<sup>4</sup> This rule is sometimes regarded as being necessitated by the terms of governing statutes or ordinances, such as enactments authorizing the erection of stop signs,<sup>5</sup> and may be specifically expressed by statute.<sup>6</sup> A driver who proceeds into an intersection controlled by a stop sign, failing to yield the right of way to a closely approaching vehicle, violates the statutory provisions governing vehicles and traffic.<sup>7</sup>

The right of way of a motorist on a thoroughfare protected by stop signs is not, however, an absolute one, but is a permissive, relative, or qualified right,<sup>8</sup> such motorist having the duty to exercise due care under all the circumstances.<sup>9</sup> The driver confronted by a stop sign may gain the right of way pursuant to the general rule governing intersections only after the driver has stopped and exercised due diligence in ascertaining the safety of proceeding into the intersection.<sup>10</sup>

That a motorist on a road protected by stop signs has the right of way over motorists on intersecting subordinate streets does not mean that the latter, having stopped at the stop sign, must refrain from crossing the favored thoroughfare whenever another vehicle is approaching thereon regardless of how far distant.<sup>11</sup> In some jurisdictions it is specifically the rule that it is the duty of an unfavored motorist to permit traffic approaching on a through street or highway to pass over the crossing, unless the motorist is justified, in the exercise of reasonable care, in believing the motorist can cross ahead of the approaching vehicle without danger of a collision.<sup>12</sup> The motorist approaching a highway which is protected by stop signs must yield the right of way to vehicles approaching on the favored thoroughfare so closely as to constitute an immediate hazard,<sup>13</sup> the duty



to yield the right of way being determined as of the time the driver reaches the through highway, and not at some distance from the intersection.<sup>14</sup>

A motorist against a stop sign may be entitled to the right of way if the motorist on the disfavored thoroughfare makes a proper stop at the stop sign, exercises due care in entering the intersection, and has effectively preempted the intersection substantially in advance of the time at which a motorist on the favored thoroughfare reaches it.<sup>15</sup> To be successful, however, a motorist claiming the preemption of an intersection while crossing a favored roadway must show entry at a time when the motorist had a reasonable opportunity to complete the crossing without endangering, or impeding the passage of a vehicle on the superior roadway.<sup>16</sup> A lawful entry into the intersection is required for preemption,<sup>17</sup> and it is not supported by a failure to perceive oncoming traffic that the driver should see.<sup>18</sup>

The rule in many jurisdictions that a motorist approaching an intersection from the right has the right of way is usually regarded, in the light of additional legislation authorizing the establishment of stop signs, as subject to the right of way accorded a motorist traveling on thoroughfares protected by stop signs, with the result that such a motorist is given the right of way at an intersection even as against vehicles approaching from the right,<sup>19</sup> particularly where such vehicles fail to come to a stop at the sign.<sup>20</sup>

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#### Footnotes

- <sup>1</sup> [Brendel v. Ellis](#), 129 Md. App. 309, 742 A.2d 1 (1999); [Schall v. Penn Transit Co.](#), 352 Pa. 129, 42 A.2d 278 (1945).
- <sup>2</sup> [Lindenbaum v. Barbour](#), 213 Cal. 277, 2 P.2d 161 (1931); [Shedlock v. Marshall](#), 186 Md. 218, 46 A.2d 349 (1946); [Mellott v. Tuckey](#), 350 Pa. 74, 38 A.2d 40 (1944); [Hemrich v. Koch](#), 177 Wash. 272, 31 P.2d 529 (1934).
- <sup>3</sup> [Brendel v. Ellis](#), 129 Md. App. 309, 742 A.2d 1 (1999).
- <sup>4</sup> [Greenfeld v. Hook](#), 177 Md. 116, 8 A.2d 888, 136 A.L.R. 1485 (1939).  
As to the nature of the duty to stop at stop signs, see § 241.
- <sup>5</sup> [Stallinger v. Johnson](#), 65 Idaho 101, 139 P.2d 460 (1943); [Otey v. Blessing](#), 170 Va. 542, 197 S.E. 409 (1938).
- <sup>6</sup> [Tobias v. Rainwater](#), 71 Wash. 2d 845, 431 P.2d 156 (1967).
- <sup>7</sup> [Ishak v. Guzman](#), 12 A.D.3d 409, 784 N.Y.S.2d 600 (2d Dep't 2004).
- <sup>8</sup> [Graveline v. Livingston](#), 130 Conn. 397, 34 A.2d 732 (1943); [Bennett v. Karnowsky](#), 24 Wash. 2d 487, 166 P.2d 192 (1946).
- <sup>9</sup> § 791.
- <sup>10</sup> [Anthony v. Jancsics](#), 2001 Mass. App. Div. 137, 2001 WL 705723 (2001).
- <sup>11</sup> [Junakin v. Kuykendall](#), 237 Miss. 255, 114 So. 2d 661 (1959).
- <sup>12</sup> [Botts v. Rushton](#), 63 Nev. 426, 172 P.2d 147 (1946).
- <sup>13</sup> [Satter v. Turner](#), 251 Minn. 1, 86 N.W.2d 85, 66 A.L.R.2d 1178 (1957); [Warren v. Watkins Motor Lines](#), 242 S.C. 331, 130 S.E.2d 896 (1963).
- <sup>14</sup> [Satter v. Turner](#), 251 Minn. 1, 86 N.W.2d 85, 66 A.L.R.2d 1178 (1957).
- <sup>15</sup> [Stuckey v. Hayden](#), 3 So. 2d 443 (La. Ct. App. 2d Cir. 1940).
- <sup>16</sup> [Archer v. Hurst](#), 938 So. 2d 741 (La. Ct. App. 1st Cir. 2006).
- <sup>17</sup> [State Farm Mut. Auto. Ins. Co. v. Little](#), 794 So. 2d 927 (La. Ct. App. 2d Cir. 2001) (red light case).

<sup>18</sup> Cormier v. Albear, 758 So. 2d 250 (La. Ct. App. 3d Cir. 2000).

<sup>19</sup> Parks v. Metz, 140 Neb. 235, 299 N.W. 643 (1941).

<sup>20</sup> Kunkel v. Paulson, 197 Minn. 107, 266 N.W. 441 (1936); Boehm v. Heston, 325 Pa. 89, 189 A. 298 (1937).

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## 7A Am. Jur. 2d Automobiles § 294

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way


#### 3. Effect of Traffic Lights, Signs, Signals, and Markings

##### b. Signs and Other Markings

## § 294. “Yield” sign or signal

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West’s Key Number Digest

West’s Key Number Digest, [Automobiles](#)  154

### A.L.R. Library

[Liability for automobile accident at intersection as affected by reliance upon or disregard of “yield” sign or signal, 2 A.L.R.3d 275](#)

Statutes or local ordinances may provide for the erection of yield signs at certain intersections and such statutes generally provide that the driver of a vehicle approaching a yield sign must, in obedience to the sign, slow down to a speed reasonable for the existing conditions and yield the right of way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection.<sup>1</sup> Thus, generally, a driver confronted by a yield sign has a duty to yield the right of way to traffic approaching on the street protected by such sign.<sup>2</sup> The driver of a vehicle proceeding on a street protected by a yield sign usually has a right to rely upon the other driver’s observation of duties associated with a yield sign confronting him or her, at least until the protected driver, as an ordinarily prudent person, should realize from the circumstances that the driver of the entering vehicle will not yield.<sup>3</sup>

However, the right of way of the driver on the favored roadway may be qualified,<sup>4</sup> and may not be blindly relied upon;<sup>5</sup> thus, in some cases, it has been held that the driver of a vehicle on a street protected by yield signs is required to observe ordinary care to avoid an accident, and the imposition of specific duties upon such driver in this connection constitutes an express or implied qualification upon the driver’s right of way or reliance upon the other driver’s obedience to the yield sign confronting

him or her.<sup>6</sup> Where, for example, the motorist on a favored street is confronted by another motorist entering an intersection from the right on a street controlled by a yield sign, the motorist has a duty to exercise the right of way with due regard to the motorist’s safety and that of others to prevent an accident if the motorist can.<sup>7</sup>

A statute regarding the right of way at a yield sign may also provide that if a driver is involved in a collision with a vehicle in the intersection after driving past a yield sign without stopping, the collision may be deemed prima facie evidence of a failure to yield the right of way.<sup>8</sup>

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#### Footnotes

- <sup>1</sup> Harbaugh v. Darr, 200 Kan. 610, 438 P.2d 74 (1968); Minter v. Clements, 206 Va. 403, 143 S.E.2d 847 (1965).
- <sup>2</sup> Moss v. Infield, 234 Ark. 425, 352 S.W.2d 584 (1962); Geisking v. Sheimo, 252 Iowa 37, 105 N.W.2d 599, 2 A.L.R.3d 268 (1960); Daugharthy v. Bennett, 207 Kan. 728, 486 P.2d 845 (1971); Minter v. Clements, 206 Va. 403, 143 S.E.2d 847 (1965).
- <sup>3</sup> Harbaugh v. Darr, 200 Kan. 610, 438 P.2d 74 (1968); White v. State Farm Mut. Auto. Ins. Co., 326 So. 2d 596 (La. Ct. App. 3d Cir. 1976); Minter v. Clements, 206 Va. 403, 143 S.E.2d 847 (1965).
- <sup>4</sup> Ramonas v. Zucker, 163 Conn. 142, 302 A.2d 242 (1972); Cooper v. Friesen, 296 Minn. 160, 207 N.W.2d 742 (1973).
- <sup>5</sup> Bretz v. Villalva, 469 S.W.2d 231 (Tex. Civ. App. El Paso 1971), writ refused n.r.e., (Dec. 1, 1971).
- <sup>6</sup> Zabunoff v. Walker, 192 Cal. App. 2d 8, 13 Cal. Rptr. 463 (1st Dist. 1961); Ramonas v. Zucker, 163 Conn. 142, 302 A.2d 242 (1972); Cooper v. Friesen, 296 Minn. 160, 207 N.W.2d 742 (1973).
- <sup>7</sup> Bretz v. Villalva, 469 S.W.2d 231 (Tex. Civ. App. El Paso 1971), writ refused n.r.e., (Dec. 1, 1971).
- <sup>8</sup> Thomas v. Le Burkian, 10 Ill. App. 3d 742, 295 N.E.2d 313 (1st Dist. 1973).

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## 7A Am. Jur. 2d Automobiles § 295

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way


##### 3. Effect of Traffic Lights, Signs, Signals, and Markings

###### b. Signs and Other Markings

## § 295. Caution, slow, danger, or like sign or signal

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  154

### A.L.R. Library

[Liability for automobile accident at intersection as affected by reliance upon or disregard of unchanging caution, slow, danger, or like sign or signal, 3 A.L.R.3d 507](#)

A motorist having a yellow flashing signal has the right of way over the driver having a red flashing signal and can assume the latter will honor the right of way, at least until the motorist in the superior position sees or should see that the other driver will not honor the right of way.<sup>1</sup> Otherwise, the driver of a vehicle confronted by cautionary traffic signs or signals is under the duty to exercise caution upon entering an intersection, the degree of which is expressly or impliedly recognized in most instances to be greater than the ordinary duty of care imposed upon a driver entering an entirely uncontrolled intersection.<sup>2</sup> Thus, drivers confronted at an intersection by a flashing yellow light have the duty, upon entering and negotiating the intersection, to exercise caution in relation to other vehicles entering the intersection,<sup>3</sup> such as a duty to proceed at a slower speed.<sup>4</sup> However, while an intermittently flashing yellow light at a street intersection denotes that traffic must enter the crossing cautiously, some courts have held that such a light requires the exercise of no more than ordinary care.<sup>5</sup>

Ordinary right-of-way rules, whether based on direction or preemption, apply to vehicles entering from intersecting streets, where neither is confronted by any form of stop sign or signal, although one of them is confronted by some form of cautionary sign or signal.<sup>6</sup> A “slow” sign placed at an intersection requires a driver confronted thereby to slow down upon

entering, and constitutes the other intersecting street as the favored street.<sup>7</sup>

The driver of a vehicle approaching and entering an intersection has the right to rely upon another driver's obedience to various types of cautionary signs or signals.<sup>8</sup> Even the driver of a vehicle confronted by a stop sign or signal, and therefore, initially at least, having the duty to yield the right of way to traffic on the protected way, has been recognized to have some right of reliance upon the protected driver's obedience to a cautionary sign or signal confronting him or her.<sup>9</sup> However, whether or not any rule requiring special caution on the part of a driver confronted by a flashing yellow light is in effect, it has been recognized that such light does not eliminate that driver's ordinary right of way, or the driver's right to rely upon obedience to a stop sign or signal, protecting a superior street, by the driver of a vehicle entering from a subordinate street.<sup>10</sup>

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#### Footnotes

- <sup>1</sup> [Lacombe v. Buras](#), 778 So. 2d 1181 (La. Ct. App. 3d Cir. 2001).
- <sup>2</sup> [Carnes v. Winslow](#), 54 Del. 536, 182 A.2d 19, 3 A.L.R.3d 501 (1962).
- <sup>3</sup> [Lowery v. Clouse](#), 348 F.2d 252 (8th Cir. 1965) (discussing Minnesota statute); [Moffatt v. Helmer](#), 345 Mich. 153, 75 N.W.2d 887 (1956); [McDonough v. Foster](#), 47 Wash. 2d 229, 287 P.2d 336 (1955).
- <sup>4</sup> [Efland v. Guyott Const. Co.](#), 138 Conn. 183, 82 A.2d 925 (1951); [Vihon v. McCormick](#), 109 So. 2d 400 (Fla. 2d DCA 1958).
- <sup>5</sup> [Jolley v. Continental Southern Lines, Inc.](#), 170 So. 2d 114 (La. Ct. App. 2d Cir. 1964).
- <sup>6</sup> [Daugharthy v. Bennett](#), 207 Kan. 728, 486 P.2d 845 (1971).
- <sup>7</sup> [Fitzsimmons v. American Auto. Ins. Co.](#), 127 So. 2d 89 (La. Ct. App. 4th Cir. 1961).
- <sup>8</sup> [Elliott v. Des Moines Ry. Co.](#), 223 Iowa 46, 271 N.W. 506 (1937) (signs marked "slow" and "streetcar crossing"); [Fitzsimmons v. American Auto. Ins. Co.](#), 127 So. 2d 89 (La. Ct. App. 4th Cir. 1961) ("slow" sign).
- <sup>9</sup> [Matthews v. Nelson](#), 57 N.J. Super. 515, 155 A.2d 111 (App. Div. 1959) (reliance upon protected driver's due regard for flashing yellow light with respect to caution required and speed); [Ezell v. Maxwell](#), 54 Tenn. App. 236, 389 S.W.2d 85 (1964) (plaintiff proceeding after stopping at stop sign could rely on defendant's slowing down in obedience to flashing amber signal).
- <sup>10</sup> [Foster v. Thomas](#), 85 Idaho 565, 382 P.2d 792 (1963); [State, for Use and Benefit of Hopkins v. Marvil Package Co.](#), 202 Md. 592, 98 A.2d 94 (1953); [Lockhart v. Longmore](#), 189 Pa. Super. 455, 151 A.2d 829 (1959).

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way

##### 4. Particular Vehicles or Circumstances

## § 296. Right of way of funeral processions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  154

### A.L.R. Library

[Liability for injury or damages resulting from operation of vehicle in funeral procession or in procession which is claimed to have such legal status, 52 A.L.R.5th 155](#)

In some jurisdictions, funeral processions, by statute or ordinance, are given the right of way except as to emergency vehicles, provided that certain requirements, such as keeping a close formation and the display of headlights, are met.<sup>1</sup> Thus, where a jurisdiction has an automated traffic enforcement system in operation, in which the recorded images are prima facie evidence of an infraction, the regulations may allow that the owner or operator of a vehicle will not be presumed liable for a violation when part of a funeral procession.<sup>2</sup> However, the mere fact that a driver is a participant in a funeral procession does not relieve the driver of the obligation of obeying a traffic signal, unless it is shown by the pleadings and the evidence that a local ordinance prescribes this right,<sup>3</sup> and in some instances, ordinances of such a nature have been held to conflict with statewide traffic regulations on the subject and therefore to be inoperative.<sup>4</sup>

A church at which a funeral service is to be conducted, and toward which a funeral procession is proceeding, constitutes a “place of burial” within a statute giving a funeral procession the right of way when going to any place of burial.<sup>5</sup> However, under a statute requiring each vehicle in a funeral procession to display a purple and white pennant clearly visible to traffic approaching from any direction, a vehicle with a less visible marker not attached in such a way as to be clearly visible to any approaching traffic is not entitled to the benefits of the statute.<sup>6</sup>

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Footnotes

- <sup>1</sup> [McClure v. Dukes](#), 61 Mich. App. 339, 232 N.W.2d 704 (1975); [McBride v. Freeze](#), 268 N.C. 681, 151 S.E.2d 661 (1966); [Butcher v. Churchill](#), 8 Ohio Op. 2d 188, 80 Ohio L. Abs. 492, 159 N.E.2d 620, 85 A.L.R.2d 689 (Ct. App. 7th Dist. Portage County 1958) (referring to statute providing that a funeral procession meant two or more vehicles accompanying a dead body in the daytime when each vehicle had its headlights on and was displaying a purple and white pennant, clearly visible to traffic approaching from any direction). As to the right of way of emergency vehicles, see § 300.
- <sup>2</sup> [Agomo v. Fenty](#), 916 A.2d 181, 26 A.L.R.6th 767 (D.C. 2007).
- <sup>3</sup> [Coleman v. Townsend](#), 948 So. 2d 369 (La. Ct. App. 2d Cir. 2007), writ denied, 956 So. 2d 620 (La. 2007).  
A vehicle in a funeral procession is not an emergency vehicle and does not have the right of way to proceed through a red traffic control light against it. [Nabors v. Spencer](#), 262 S.C. 630, 207 S.E.2d 79 (1974).
- <sup>4</sup> [Merkling v. Ford Motor Co.](#), 251 A.D. 89, 296 N.Y.S. 393 (4th Dep't 1937); [Rinkes v. Tyler](#), 86 Ohio App. 8, 40 Ohio Op. 450, 89 N.E.2d 694 (9th Dist. Wayne County 1949).
- <sup>5</sup> [Mentel v. Monroe Public Schools](#), 47 Mich. App. 467, 209 N.W.2d 506 (1973).
- <sup>6</sup> [Butcher v. Churchill](#), 8 Ohio Op. 2d 188, 80 Ohio L. Abs. 492, 159 N.E.2d 620, 85 A.L.R.2d 689 (Ct. App. 7th Dist. Portage County 1958).

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way

##### 4. Particular Vehicles or Circumstances

## § 297. Right of way in narrow bridges or passages

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  154

### A.L.R. Library

[Rights, duties, and liability with respect to narrow bridge or passage as between motor vehicles approaching from opposite directions, 47 A.L.R.2d 142](#)

The law of the road generally holds that where two motorists approaching from opposite directions meet a bridge or passage so narrow as to make it impossible or dangerous for both to pass at the same time, the one who first reaches the passage, or who would normally so reach it if both continued at proper speeds, has the right of way, and it is the duty of the other motorist to refrain from entering the bridge or passage until the first motorist has safely cleared it.<sup>1</sup> A vehicle traveling at a substantially faster speed does not necessarily have to yield the right of way to a slow-moving vehicle even though the latter may be, upon first sight of one another, closer to the bridge, if it is clear that the faster vehicle will reach the bridge substantially before the other.<sup>2</sup> However, in particular circumstances, the right of way between oncoming vehicles approaching or crossing a bridge may be subject to other rules governing the right of way, such as the statutory duty of a motorist to yield the right of way to a snowplow with its amber lights activated.<sup>3</sup> Additionally, the right of way at narrow bridges or passages may be affected by customs as to precedent at such places.<sup>4</sup>

Some cases have taken the view that where one side of a road is closed by construction operations, a motorist whose normal lane of travel would be that which is closed is required to yield the right of way to a motorist coming from the opposite direction on his or her proper side.<sup>5</sup> In other cases, the courts have applied the ordinary rules that the motorist first entering a

narrow passage has the right of way over motorists subsequently approaching and that if the way is wide enough to permit simultaneous passage, but so narrow as to create unusual dangers, each may proceed, in the exercise of proper care to remain on his or her own proper side of the road.<sup>6</sup>

The ordinary rules as to the right of way of a motorist first entering a narrow passage, and as to the duty to operate a vehicle in such a passage at a reasonable speed in view of the special dangers presented, may be applied in cases involving motorists meeting at places where the usable road is limited to a narrow passage cut through snow banks.<sup>7</sup> Thus, where snowdrifts have left only a narrow lane open for travel and one motorist has already entered that lane, another driver approaching from the opposite direction must slow down and yield the right of way.<sup>8</sup>

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#### Footnotes

- <sup>1</sup> [Worthington v. McDonald](#), 246 Iowa 466, 68 N.W.2d 89, 47 A.L.R.2d 135 (1955); [Kirtley v. Irely](#), 375 S.W.2d 129 (Mo. 1964).
- <sup>2</sup> [Short v. Robinson](#), 280 Ky. 707, 134 S.W.2d 594 (1939).
- <sup>3</sup> [In re New Hampshire Dept. of Transp.](#), 152 N.H. 690, 886 A.2d 967 (2005).
- <sup>4</sup> [Langner v. Caviness](#), 238 Iowa 774, 28 N.W.2d 421, 172 A.L.R. 1135 (1947) (custom at particular bridge was for empty trucks to yield to loaded trucks).
- <sup>5</sup> [Purdie v. Brunswick](#), 20 Wash. 2d 292, 146 P.2d 809 (1944).
- <sup>6</sup> [Green v. Guynes](#), 361 Mo. 606, 235 S.W.2d 298 (1951).
- <sup>7</sup> [Loveland v. Nieters](#), 79 N.D. 1, 54 N.W.2d 533 (1952); [McConaha v. Cook](#), 5 Ohio App. 2d 24, 34 Ohio Op. 2d 65, 213 N.E.2d 198 (10th Dist. Franklin County 1965).
- <sup>8</sup> [Pospichal v. Wiley](#), 163 Neb. 236, 79 N.W.2d 275 (1956).

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## 7A Am. Jur. 2d Automobiles § 298

American Jurisprudence, Second Edition | May 2021 Update

### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way

##### 4. Particular Vehicles or Circumstances

## § 298. Right of way of emergency vehicles

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  154

### A.L.R. Library

[Construction and Application of Statutory Provision Requiring Motorists to Yield Right-of-Way to Emergency Vehicle, 87 A.L.R.5th 1](#)

[Liability for personal injury or property damage from operation of ambulance, 84 A.L.R.2d 121](#)

[Liability arising from accidents involving police vehicles, 83 A.L.R.2d 383](#)

[Liability for personal injury or damage from operation of fire department vehicle, 82 A.L.R.2d 312](#)

### Trial Strategy

[Negligent Operation of Emergency Vehicle, 10 Am. Jur. Proof of Facts 3d 203](#) §§ 5 to 16

While in the absence of statute or ordinance, emergency vehicles, such as fire engines and police cars, may be subject to the ordinary rules of the road relating to the right of way,<sup>1</sup> generally the rules applicable to emergency vehicles, including as to the right of way, are prescribed by statute or ordinance.<sup>2</sup> Thus, such vehicles, when engaged in an emergency call, may be

specially granted the right of way over other vehicular traffic,<sup>3</sup> including the right of way at intersections, and even as against red traffic lights.<sup>4</sup> An ambulance driver, under a statute giving emergency vehicles the privilege of proceeding past a red light or stop signal or stop sign after slowing down as might be necessary for safe operation, is only required to have the siren on and give other highway users an opportunity to yield, and is entitled to assume that other highway users will yield the right of way.<sup>5</sup>

As between two emergency vehicles, neither has the right of way over the other<sup>6</sup> unless the statutory provisions governing the matter grant, or are construed to grant, one type of emergency vehicle a right of way as against another.<sup>7</sup>

The owner and operator of a police vehicle which struck a pedestrian while he was walking in a crosswalk were liable for a pedestrian's injuries, and the pedestrian was free from comparative fault, where, before crossing, the pedestrian waited for a traffic signal to be in his favor and exercised due care by looking in both directions of the roadway, while the crossing pedestrian observed the police vehicle approach the intersection and slow down, and, believing that it was going to stop, as the red light was against it, the pedestrian continued to cross, and the pedestrian was struck by the vehicle before he could finish crossing.<sup>8</sup>

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#### Footnotes

- <sup>1</sup> [Poole v. City of Louisville](#), 107 Ga. App. 305, 130 S.E.2d 157 (1963).
- <sup>2</sup> [Politte v. Miller](#), 301 S.W.2d 839 (Mo. Ct. App. 1957).
- <sup>3</sup> [Tiedebohl v. Springer](#), 1951-NMSC-044, 55 N.M. 295, 232 P.2d 694 (1951); [Burigo v. Di Leo](#), 38 Misc. 2d 851, 239 N.Y.S.2d 166 (County Ct. 1963).
- <sup>4</sup> § 292.
- <sup>5</sup> [Seaberg v. U.S.](#), 448 F.2d 391 (9th Cir. 1971) (applying Washington law).
- <sup>6</sup> [Farrell v. Fire Ins. Salvage Corps](#), 189 A.D. 795, 179 N.Y.S. 477 (2d Dep't 1919).
- <sup>7</sup> [Coleman v. Fire Ins. Patrol of New Orleans](#), 122 La. 626, 48 So. 130 (1908).
- <sup>8</sup> [Berrios-Lemus v. Village of Spring Valley](#), 122 A.D.3d 650, 995 N.Y.S.2d 736 (2d Dep't 2014).  
For full discussion of right of way as between motorists and pedestrians, including relative to pedestrians crossing roadways, see §§ 301 to 304.

## 7A Am. Jur. 2d Automobiles § 299

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way

##### 4. Particular Vehicles or Circumstances

## § 299. Right of way of emergency vehicles—Particular vehicles

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

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Emergency vehicles entitled to the particular right of way over other motorists given to such vehicles while engaged in an emergency call, include fire engines,<sup>1</sup> police cars,<sup>2</sup> and ambulances.<sup>3</sup> Thus, for example, a police cruiser acting in an emergency may properly run a red light, although with the exercise of due care for public safety.<sup>4</sup>

The rule may apply to the operation of an official car by a firefighter in response to an emergency, pursuant to which a motorist is required by statute to stop and yield the right of way to such vehicle.<sup>5</sup> It may also apply to a volunteer firefighter traveling to a fire department station or other place of assembly in answer to a fire call or in response to a summons for emergency fire department service; a firefighter has been held entitled to the same right of way at intersections as when leaving the assembly point and is in the process of going directly to the scene of a fire or to some other place where an emergency exists.<sup>6</sup> However, while such special privileges granted to emergency vehicles, where reasonable, are upheld as a valid exercise of the police power,<sup>7</sup> provisions providing for such rights to vehicles responding to an emergency may be invalid if applied to the private vehicle of a physician,<sup>8</sup> or of a fire and protective association organized and owned by a fire insurance company.<sup>9</sup>

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### Footnotes

<sup>1</sup> [Tiedebohl v. Springer](#), 1951-NMSC-044, 55 N.M. 295, 232 P.2d 694 (1951).

<sup>2</sup> [McKay v. Hargis](#), 351 Mich. 409, 88 N.W.2d 456 (1958); [Brennan v. City of Albany](#), 284 A.D. 997, 135 N.Y.S.2d 293 (3d Dep't 1954).  
"Other traffic" that can be affected by a driver's failure to signal can include a police vehicle. [State v. Heisler](#), 422 N.J.

Super. 399, 29 A.3d 320 (App. Div. 2011).

<sup>3</sup> Bull v. Drew, 1 A.D.2d 793, 149 N.Y.S.2d 235 (3d Dep't 1956); McEwen Funeral Service, Inc. v. Charlotte City Coach Lines, Inc., 248 N.C. 146, 102 S.E.2d 816 (1958); Virginia Transit Co. v. Hodges, 201 Va. 232, 110 S.E.2d 231, 84 A.L.R.2d 115 (1959).

<sup>4</sup> City of Louisville v. Chapman, 413 S.W.2d 74 (Ky. 1967).

<sup>5</sup> Burigo v. Di Leo, 38 Misc. 2d 851, 239 N.Y.S.2d 166 (County Ct. 1963).

<sup>6</sup> City of Canton v. Snyder, 168 Ohio St. 69, 5 Ohio Op. 2d 313, 151 N.E.2d 15 (1958).

<sup>7</sup> Kidd v. Chissell, 146 Md. 169, 126 A. 82, 38 A.L.R. 20 (1924); Vandell v. Sanders, 85 N.H. 143, 155 A. 193, 80 A.L.R. 550 (1931); West v. Jaloff, 113 Or. 184, 232 P. 642, 36 A.L.R. 1391 (1925).

<sup>8</sup> Kidd v. Chissell, 146 Md. 169, 126 A. 82, 38 A.L.R. 20 (1924).

<sup>9</sup> Louisville R. Co. v. Louisville Fire & Life Protective Ass'n, 151 Ky. 644, 152 S.W. 799 (1913).

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## 7A Am. Jur. 2d Automobiles § 300

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way

##### 4. Particular Vehicles or Circumstances

## § 300. Right of way of emergency vehicles—Duty of other motorists

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  154

### Forms

Forms regarding emergency vehicles, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic [[Westlaw®\(r\) Search Query](#)]

In yielding the right of way to an emergency vehicle, a motorist is generally required to pull over immediately as near to the right-hand side of the roadway as possible, clear of any intersection, and stop until such vehicle has passed,<sup>1</sup> which requirements may also apply when the motorist is approaching at right angles a street on which an emergency vehicle is proceeding,<sup>2</sup> inasmuch as the motorist has no way of knowing when or where the emergency vehicle may turn in proceeding to the scene of the emergency.<sup>3</sup> However, no duty rests upon the operator of a motor vehicle making normal use of a highway to yield the right of way to another vehicle on an emergency mission until an appropriate warning has been given the individual, and the operator has a reasonable opportunity to yield the prior right.<sup>4</sup> The duty to yield the right of way to an emergency vehicle arises only when a motorist observes or hears, or under the circumstances should have observed or heard, the audible and visual warnings of such a vehicle.<sup>5</sup> However, a motorist is charged with hearing what should have been heard in the exercise of reasonable care.<sup>6</sup>

Under certain circumstances, the test with respect to the duty of motorists in the presence of emergency vehicles is that of reasonableness.<sup>7</sup>

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Footnotes

- <sup>1</sup> McKay v. Hargis, 351 Mich. 409, 88 N.W.2d 456 (1958); Varlaro v. Schultz, 82 N.J. Super. 142, 197 A.2d 16 (App. Div. 1964); Merlino v. Mutual Service Cas. Ins. Co., 23 Wis. 2d 571, 127 N.W.2d 741 (1964).
- <sup>2</sup> City of Auburn v. Roate, 246 A.D. 461, 284 N.Y.S. 1 (4th Dep't 1935).
- <sup>3</sup> Clough v. Schwartz, 94 N.H. 138, 48 A.2d 921 (1946).
- <sup>4</sup> McKay v. Hargis, 351 Mich. 409, 88 N.W.2d 456 (1958); Politte v. Miller, 301 S.W.2d 839 (Mo. Ct. App. 1957); McEwen Funeral Service, Inc. v. Charlotte City Coach Lines, Inc., 248 N.C. 146, 102 S.E.2d 816 (1958).
- <sup>5</sup> Butcher v. City of Monroe, 737 So. 2d 189 (La. Ct. App. 2d Cir. 1999), writ denied, 747 So. 2d 566 (La. 1999).
- <sup>6</sup> Calvert Fire Ins. Co. v. Hall Funeral Home, 68 So. 2d 626 (La. Ct. App. 2d Cir. 1953); Parton v. Weilnau, 169 Ohio St. 145, 8 Ohio Op. 2d 134, 158 N.E.2d 719 (1959).
- <sup>7</sup> City of Akron v. Susong, 52 Ohio Misc. 1, 5 Ohio Op. 3d 307, 6 Ohio Op. 3d 30, 367 N.E.2d 940 (Mun. Ct. 1977) (in a prosecution under a traffic ordinance of a motorist who drove through a fire block in order to allow room for an emergency vehicle to pass through an intersection, the prosecution was required to offer evidence sufficient to establish that the motorist's actions were unreasonable and improper considering the traffic, surface, and width of the street and other conditions then existing).

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## 7A Am. Jur. 2d Automobiles § 301

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way

#### 5. Right of Way as Between Pedestrians and Vehicles

### § 301. Right of way as between pedestrians and vehicles, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  154, 160(4)

#### A.L.R. Library

[Who is "pedestrian" entitled to rights and subject to duties provided by traffic regulations or judicially stated, 35 A.L.R.4th 1117](#)

#### Forms

Forms regarding pedestrians, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic [\[Westlaw®\(r\) Search Query\]](#)

In the absence of a statute or ordinance regulating the matter, as between a pedestrian and a motorist, neither has a superior right of way at an intersection, but rather their rights at intersections are mutual and coordinate,<sup>1</sup> and the one that has first entered or preempted an intersection has the right of way over the other.<sup>2</sup> While statutory rules governing the right of way of vehicles at intersections have been held not to apply to the right of way as between pedestrians and motorists,<sup>3</sup> in many jurisdictions statutes or ordinances grant to pedestrians the right of way over motorists at intersections,<sup>4</sup> or at marked crosswalks,<sup>5</sup> at least to the extent that such intersections or crosswalks are not controlled by traffic officers or traffic control

signals.<sup>6</sup> It may be made an offense for a motorist to fail to grant the right of way, as required by law, to a pedestrian,<sup>7</sup> and drivers must ordinarily anticipate the presence of pedestrians at a street crossing, and where they cannot see whether the crossing is clear, they must have their cars under such control as to meet the conditions which may be reasonably expected.<sup>8</sup> That is, a pedestrian's appearance in a crosswalk is a situation that a driver should anticipate and be prepared to deal with.<sup>9</sup> A driver must exercise due care to avoid colliding with a pedestrian in the pedestrian's right-of-way only upon discovering a dangerous or perilous situation.<sup>10</sup>

Statutes or ordinances giving pedestrians the right of way at intersections create a preferential, but not an absolute, right in their favor,<sup>11</sup> and they still owe a duty to exercise ordinary care for their own safety.<sup>12</sup> A pedestrian is granted the right-of-way in relationship to a vehicle at an uncontrolled intersection where the direction, speed, and proximity of the pedestrian and the vehicle pose a danger of collision so long as the pedestrian did not suddenly enter into the path of the vehicle.<sup>13</sup> A pedestrian who entered a five-lane highway without a crosswalk was not in an "unmarked crosswalk" so as to have the right of way at the time she entered the highway and was struck by an oncoming vehicle; the boulevard that crossed the highway was a "driveway" and did not create an "intersection," as required to create an unmarked crosswalk.<sup>14</sup>

In some jurisdictions statutes or ordinances provide that pedestrians crossing highways or streets at intersections must at all times have the right of way over motorists making turns into the highways or streets being crossed by the pedestrians. Such a statute does not apply so as to give a pedestrian crossing a street at an intersection a right of way over a motorist already proceeding in such street.<sup>15</sup>

Within the meaning of a traffic regulation providing that pedestrians will have the right of way at intersections, the term "pedestrians" includes the old and the young, the weak and the strong, and children of tender years,<sup>16</sup> and may include, for example, a child on a four-wheel scooter propelled across the roadway by one foot.<sup>17</sup> Furthermore, a pedestrian does not lose the character of "pedestrian" or a statutory right of way at an intersection by reason of slipping and falling to the pavement, where the pedestrian lies, temporarily paralyzed.<sup>18</sup>

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#### Footnotes

- <sup>1</sup> [Petersen v. Lundin](#), 236 Mich. 590, 211 N.W. 86 (1926); [Ritter v. Hicks](#), 102 W. Va. 541, 135 S.E. 601, 50 A.L.R. 1505 (1926).
- <sup>2</sup> [W.U. Tel. Co. v. Dickson](#), 27 Tenn. App. 752, 173 S.W.2d 714 (1941) (holding that a pedestrian had the right of way over a bicyclist where the pedestrian entered the intersection first). As to rights and duties of pedestrians, generally, see §§ 321 to 325.
- <sup>3</sup> [Yarbrough v. Carlson](#), 102 Or. 422, 202 P. 739 (1921).
- <sup>4</sup> [Floyd v. Lipka](#), 51 Del. 487, 148 A.2d 541 (1959); [Horwitz v. Eurove](#), 129 Ohio St. 8, 1 Ohio Op. 306, 193 N.E. 644, 96 A.L.R. 782 (1934); [Wong v. Terminal Cars, Inc.](#), 201 Va. 564, 111 S.E.2d 799 (1960).
- <sup>5</sup> § 302.
- <sup>6</sup> [Hoefl v. Milwaukee & Suburban Transport Corp.](#), 42 Wis. 2d 699, 168 N.W.2d 134 (1969) (an intersection posted by stop signs as to traffic traversing one street only was not a controlled intersection, but was an uncontrolled intersection within a statute giving a pedestrian the right of way at an uncontrolled intersection or crosswalk).
- <sup>7</sup> [Hart v. Mealey](#), 287 N.Y. 39, 38 N.E.2d 121 (1941).
- <sup>8</sup> [Sweet v. Ringwelski](#), 362 Mich. 138, 106 N.W.2d 742, 90 A.L.R.2d 1434 (1961).
- <sup>9</sup> [Santos-Lopez v. Metropolitan Transit Authority](#), 85 A.D.3d 512, 925 N.Y.S.2d 57 (1st Dep't 2011).
- <sup>10</sup> [Neu v. Estate of Nussbaum](#), 2015-Ohio-159, 27 N.E.3d 906 (Ohio Ct. App. 12th Dist. Butler County 2015).
- <sup>11</sup> [Bolster v. Cooper](#), 188 Minn. 364, 247 N.W. 250 (1933); [Horwitz v. Eurove](#), 129 Ohio St. 8, 1 Ohio Op. 306, 193 N.E.

644, 96 A.L.R. 782 (1934).

12 § 460.

13 State v. Haugland, 157 Idaho 628, 338 P.3d 1232 (Ct. App. 2014).

14 Wallace v. Hipp, 2012-Ohio-623, 2012 WL 525530 (Ohio Ct. App. 6th Dist. Lucas County 2012).

15 Wong v. Terminal Cars, Inc., 201 Va. 564, 111 S.E.2d 799 (1960).

16 Kidd v. Cox, 40 So. 2d 454 (Fla. 1949).

As to who is a “pedestrian” within the meaning of traffic rules and regulations, generally, see § 231.

17 Jermane v. Forfar, 108 Cal. App. 2d 849, 240 P.2d 351, 30 A.L.R.2d 860 (1st Dist. 1952).

18 Gary Rys. v. Dillon, 228 Ind. 558, 92 N.E.2d 720 (1950).

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## 7A Am. Jur. 2d Automobiles § 302

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way

#### 5. Right of Way as Between Pedestrians and Vehicles

## § 302. Right of way in marked crosswalks

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  154, 160(4)

### Forms

Forms regarding pedestrians, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic  
[\[Westlaw®\(r\) Search Query\]](#)

Statutes or ordinances may grant the right of way to pedestrians crossing an intersection within the limits of a marked crosswalk,<sup>1</sup> imposing a duty on drivers to yield to pedestrians in crosswalks which is greater than the mere duty to maintain a lookout before entering a crosswalk and maintain control of the vehicle.<sup>2</sup> That is, the drivers of vehicles are required to yield the right-of-way to pedestrians in any marked crosswalk,<sup>3</sup> and while the law imposes a duty of care on a pedestrian, even when that pedestrian has the right-of-way in a crosswalk, that duty does not extend to continually checking for vehicles coming from every direction while in the process of crossing the street.<sup>4</sup>

It is the duty of a motorist approaching such a crosswalk to know whether it is occupied by pedestrians, and, if so, to yield the right of way to them.<sup>5</sup> The protection afforded pedestrians by a crosswalk does not end at the inside of the lines but includes the lines of the identified path; the lines define the edges of the crosswalk area.<sup>6</sup> However, the pedestrian's right of way may be extended to embrace a pedestrian who is a foot or so outside the limits of a crosswalk and not actually therein.<sup>7</sup> A bicyclist may have the same rights as a pedestrian to use a crosswalk, and thus be entitled to a right of way while in the crosswalk.<sup>8</sup>

Footnotes

- <sup>1</sup> [Coulthard v. Keenan](#), 256 Iowa 890, 129 N.W.2d 597 (1964); [Sargent v. Collins](#), 134 P.3d 37 (Kan. Ct. App. 2006), unpublished.
- <sup>2</sup> [Sargent v. Collins](#), 134 P.3d 37 (Kan. Ct. App. 2006), unpublished.  
As to rights and duties of pedestrians generally, see §§ [321](#) to [325](#).
- <sup>3</sup> [Mixon v. State](#), 207 Cal. App. 4th 124, 142 Cal. Rptr. 3d 633 (1st Dist. 2012).
- <sup>4</sup> [Quintavalle v. Perez](#), 139 A.D.3d 182, 30 N.Y.S.3d 81 (1st Dep't 2016), leave to appeal dismissed, 28 N.Y.3d 1068, 43 N.Y.S.3d 253, 65 N.E.3d 1288 (2016).
- <sup>5</sup> [Nicholas v. Leslie](#), 7 Cal. App. 2d 590, 46 P.2d 761 (2d Dist. 1935).
- <sup>6</sup> [Jenkins v. Wolf](#), 2006 PA Super 321, 911 A.2d 568 (2006).
- <sup>7</sup> [Nicholas v. Leslie](#), 7 Cal. App. 2d 590, 46 P.2d 761 (2d Dist. 1935).
- <sup>8</sup> [Nish v. Schaefer](#), 2006 WY 85, 138 P.3d 1134 (Wyo. 2006).

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## 7A Am. Jur. 2d Automobiles § 303

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### D. Right of Way

#### 5. Right of Way as Between Pedestrians and Vehicles

### § 303. Right of way of pedestrians crossing at other than intersection or marked crosswalk

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  154, 160(4)

#### A.L.R. Library

[Who is "pedestrian" entitled to rights and subject to duties provided by traffic regulations or judicially stated, 35 A.L.R.4th 1117](#)

Statutes and ordinances may require pedestrians crossing a street or roadway at any point other than within a marked crosswalk, or within an unmarked crosswalk at an intersection, to yield the right of way to motorists.<sup>1</sup> The rights of pedestrians and automobile drivers are reciprocal, and the only practical effect of a statute on pedestrians outside crosswalks is that a pedestrian crossing outside a crosswalk must yield the right of way to passing automobiles so that the pedestrian does not constitute an immediate hazard to others on the road.<sup>2</sup> Thus, such a statute or ordinance does not prohibit the crossing of streets between intersections by a pedestrian, but merely requires the pedestrian to yield precedence to motorists if the situation is such, taking into account the respective positions of the parties and the speed at which they are traveling, that if both persist in their course, the pedestrian will be struck by the motorist.<sup>3</sup> Such a statute or ordinance does not create an absolute, but only a relative, right in favor of the motorist, establishing a rule of precedence when rights might otherwise be balanced.<sup>4</sup>

Such a statute or ordinance is not applicable to one who has alighted from a bus beyond a highway intersection,<sup>5</sup> or as between a pedestrian crossing the highway or street and a motorist standing still when the pedestrian starts to cross.<sup>6</sup>

A pedestrian who entered a five-lane highway without a marked crosswalk violated the statutory right of way of an oncoming vehicle and was negligent per se; moreover, the driver of the oncoming vehicle had no duty to look for the pedestrian, where there was no expected hazard or danger present which would have required the driver to be on the lookout for a pedestrian.<sup>7</sup>

A statute requiring pedestrians crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection to yield the right of way to motorists is not limited in application to city streets, but applies to open highways in open country as well, in the absence of language restricting its scope.<sup>8</sup> Furthermore, the use of a particular section of a highway or street by pedestrians for crossing purposes over a period of time does not, by itself, establish a right of way for pedestrians, where pedestrians otherwise only have the right of way at intersections or marked crosswalks.<sup>9</sup>

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#### Footnotes

- <sup>1</sup> Chandler v. Keene, 5 A.D.2d 42, 168 N.Y.S.2d 788 (3d Dep't 1957); Gamble v. Sears, 252 N.C. 706, 114 S.E.2d 677 (1960); Langlois v. Rees, 10 Utah 2d 272, 351 P.2d 638 (1960); Field v. Vinograd, 10 Wis. 2d 500, 103 N.W.2d 671 (1960).
- <sup>2</sup> People v. Ramirez, 140 Cal. App. 4th 849, 44 Cal. Rptr. 3d 813 (2d Dist. 2006).
- <sup>3</sup> Chandler v. Keene, 5 A.D.2d 42, 168 N.Y.S.2d 788 (3d Dep't 1957).
- <sup>4</sup> Pueblo Transp. Co. v. Moylan, 123 Colo. 207, 226 P.2d 806 (1951); Deeke v. Steffke Freight Co., 50 Ill. App. 2d 1, 199 N.E.2d 442, 24 A.L.R.3d 173 (2d Dist. 1964); Langlois v. Rees, 10 Utah 2d 272, 351 P.2d 638 (1960).
- <sup>5</sup> Gaskins v. Kelly, 228 N.C. 697, 47 S.E.2d 34 (1948).
- <sup>6</sup> Flynn v. Carolina Scenic Stages, 237 S.C. 340, 117 S.E.2d 364 (1960).
- <sup>7</sup> Wallace v. Hipp, 2012-Ohio-623, 2012 WL 525530 (Ohio Ct. App. 6th Dist. Lucas County 2012).
- <sup>8</sup> Williams v. Burke, 1960-NMSC-134, 68 N.M. 35, 357 P.2d 1087 (1960).
- <sup>9</sup> Langlois v. Rees, 10 Utah 2d 272, 351 P.2d 638 (1960).

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## 7A Am. Jur. 2d Automobiles § 304

American Jurisprudence, Second Edition | May 2021 Update

### Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration


#### D. Right of Way

#### 5. Right of Way as Between Pedestrians and Vehicles

## § 304. Right of way of pedestrians on sidewalks

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  154, 160(6)

A pedestrian is generally held to have the right of way on the sidewalk over a motor vehicle driven thereon, even assuming that the part of the sidewalk in question is a part on which the vehicle generally has a right to be.<sup>1</sup> In many jurisdictions statutes or ordinances have been enacted which expressly grant pedestrians on the sidewalk the right of way over vehicles crossing the sidewalk,<sup>2</sup> some of which require the vehicles to stop upon reaching the sidewalk and before going thereon.<sup>3</sup> However, a concrete apron between the street and the sidewalk which provided for access to a service station has been held not to constitute a sidewalk within the meaning of a statute granting pedestrians the right of way over all vehicles crossing a sidewalk.<sup>4</sup>

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#### Footnotes

- <sup>1</sup> [Brandes v. Freitas](#), 116 Cal. App. 459, 2 P.2d 830 (2d Dist. 1931); [Guyan Chevrolet Co. v. Dillow](#), 264 Ky. 812, 95 S.W.2d 796 (1936).
- <sup>2</sup> [Jackson v. Lovas](#), 106 Cal. App. 2d 426, 235 P.2d 232 (2d Dist. 1951); [Leopold v. Williams](#), 54 Ohio App. 540, 8 Ohio Op. 294, 23 Ohio L. Abs. 582, 8 N.E.2d 476 (6th Dist. Lucas County 1936).
- <sup>3</sup> [Hatten v. Brame](#), 233 Miss. 509, 103 So. 2d 4 (1958); [Bien v. Meyers](#), 9 N.J. Misc. 676, 155 A. 480 (Sup. Ct. 1931); [Messick v. Barham](#), 194 Va. 382, 73 S.E.2d 530 (1952).
- <sup>4</sup> [Brunette v. Bierke](#), 271 Wis. 190, 72 N.W.2d 702 (1955) (a separate strip of concrete was a sidewalk proper, provided for pedestrians, and the apron in question was not intended for the use of pedestrians as a sidewalk).



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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### E. Parking or Standing

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  [5\(3\)](#), [12](#), [119](#), [333](#), [334](#)

### A.L.R. Library


A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Backing Up

A.L.R. Index, Stalled or Disabled Vehicle

A.L.R. Index, Stopped or Standing Vehicles

A.L.R. Index, Traffic Offenses and Violations

West's A.L.R. Digest, [Automobiles](#)  [5\(3\)](#), [12](#), [119](#), [333](#), [334](#)

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## 7A Am. Jur. 2d Automobiles § 305

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### E. Parking or Standing

##### 1. In General

## § 305. Parking or standing regulations and validity, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  5(3), 12, 119, 333, 334

### Forms

Forms regarding parking, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic  
[\[Westlaw®\(r\) Search Query\]](#)

The parking or standing of vehicles upon the public highways or streets is subject to governmental regulation in the exercise of the police power.<sup>1</sup> Municipalities, pursuant to properly delegated legislative authority, have the right to enact reasonable regulations relating to the parking or standing of vehicles,<sup>2</sup> and the authority to enact regulations relating to the parking or standing of vehicles may be implied from the power delegated to municipalities to regulate traffic,<sup>3</sup> or to prevent the encumbering of their streets with vehicles.<sup>4</sup>

Similarly, villages may have the power, as provided by statute, to restrict parking on village streets,<sup>5</sup> and a township's resolution banning parking on a road where it ends in a cul-de-sac is a reasonable exercise of police power.<sup>6</sup> However, a provision in a township parking ordinance setting forth a 3:1 ratio between seats and parking spaces for churches is facially vague in violation of due process where the provision gives the township planning board blanket authority to change the ratio without abiding by any explicit standards, and thereby fails to provide sufficiently explicit criteria to prevent discriminatory ad hoc enforcement at the expense of the constitutional right to the free exercise of religion.<sup>7</sup>

Pursuant to their powers to regulate the parking and standing of vehicles, municipalities may limit the time for parking in

certain streets,<sup>8</sup> or may entirely prohibit parking in certain congested streets,<sup>9</sup> or during specified hours in certain streets,<sup>10</sup> or in times of emergency.<sup>11</sup> For example, a city ordinance prohibiting parking on streets between certain early morning hours may be valid, notwithstanding an allegation that it discriminates against low-income people living in high-density areas within the city.<sup>12</sup>

A local subdivision of government may not have the authority to prohibit parking on roadways without statutory authorization.<sup>13</sup>

To be valid, municipal or local regulations relating to the parking or standing of vehicles must be reasonable and not oppressive in effect,<sup>14</sup> and must not interfere with the right of access to and from the abutting premises,<sup>15</sup> and ordinarily a locality lacks the authority to enforce its public parking regulations in private parking areas.<sup>16</sup>

The right to travel on a public street or highway includes the right to stop temporarily for legitimate or necessary purposes immediately incident to travel, and that right cannot be arbitrarily or unreasonably restricted or cut off by enactments regulating parking and stopping.<sup>17</sup>

Furthermore, local regulations for the parking and standing of vehicles may not be enacted if in conflict or inconsistent with state statutes designed to regulate the same subject.<sup>18</sup>

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#### Footnotes

- <sup>1</sup> [Andrews v. City of Marion](#), 221 Ind. 422, 47 N.E.2d 968 (1943); [Kimmel v. City of Spokane](#), 7 Wash. 2d 372, 109 P.2d 1069 (1941).
- <sup>2</sup> [Levine v. Police Com'n of Town of Fairfield](#), 28 Conn. App. 344, 612 A.2d 787 (1992); [Associated Students of University of Montana v. City of Missoula](#), 261 Mont. 231, 862 P.2d 380, 87 Ed. Law Rep. 268 (1993).
- <sup>3</sup> [Salomone v. City of Canton](#), 30 Ill. App. 2d 474, 175 N.E.2d 663 (3d Dist. 1961); [People v. Rubin](#), 284 N.Y. 392, 31 N.E.2d 501 (1940); [M. H. Rhodes, Inc. v. City of Raleigh](#), 217 N.C. 627, 9 S.E.2d 389, 130 A.L.R. 311 (1940); [City of Rapid City v. Rensch](#), 77 S.D. 242, 90 N.W.2d 380 (1958).
- <sup>4</sup> [Village of Wonewoc v. Taubert](#), 203 Wis. 73, 233 N.W. 755, 72 A.L.R. 224 (1930).
- <sup>5</sup> [Yunker v. Village of Ossining](#), 41 A.D.3d 470, 837 N.Y.S.2d 297 (2d Dep't 2007).
- <sup>6</sup> [Todd v. Finlay](#), 2002-Ohio-1058, 2002 WL 398768 (Ohio Ct. App. 4th Dist. Lawrence County 2002).
- <sup>7</sup> [Islamic Society of Basking Ridge v. Township of Bernards](#), 2016 WL 7496661 (D.N.J. 2016) (applying New Jersey law).
- <sup>8</sup> [Borough of Atlanta v. Kirk](#), 175 Ga. 395, 165 S.E. 69 (1932); [City of Chicago v. McKinley](#), 344 Ill. 297, 176 N.E. 261 (1931); [Com. v. Ober](#), 286 Mass. 25, 189 N.E. 601 (1934).
- <sup>9</sup> [Pugh v. City of Des Moines](#), 176 Iowa 593, 156 N.W. 892 (1916); [State v. Carter](#), 205 N.C. 761, 172 S.E. 415 (1934).
- <sup>10</sup> [Yunker v. Village of Ossining](#), 41 A.D.3d 470, 837 N.Y.S.2d 297 (2d Dep't 2007) (village prohibiting overnight parking); [City of East Cleveland v. Palmer](#), 40 Ohio App. 2d 10, 69 Ohio Op. 2d 6, 317 N.E.2d 246 (8th Dist. Cuyahoga County 1974); [Corbett-Barbour Drilling Co. v. Hanna](#), 1950 OK 200, 203 Okla. 372, 222 P.2d 376 (1950).
- <sup>11</sup> [People v. Sullivan](#), 135 Misc. 705, 238 N.Y.S. 253 (N.Y. City Ct. 1930).
- <sup>12</sup> [State v. Rush](#), 324 A.2d 748 (Me. 1974).
- <sup>13</sup> [Eberth v. County of Prince William](#), 49 Va. App. 105, 637 S.E.2d 338 (2006) (county did not have power to prohibit uninspected cars from parking on public highways).

<sup>14</sup> Triplett v. City of Corbin, 269 S.W.2d 188 (Ky. 1954).

<sup>15</sup> § 312.

<sup>16</sup> Eberth v. County of Prince William, 49 Va. App. 105, 637 S.E.2d 338 (2006).

<sup>17</sup> Salomone v. City of Canton, 30 Ill. App. 2d 474, 175 N.E.2d 663 (3d Dist. 1961); Northern Indiana Transit, Inc. v. Burk, 228 Ind. 162, 89 N.E.2d 905, 17 A.L.R.2d 572 (1950).

<sup>18</sup> City Of Monroe v. Jones, 259 Mich. App. 443, 674 N.W.2d 703 (2003); People v. Speakerkits, Inc., 83 N.Y.2d 814, 611 N.Y.S.2d 488, 633 N.E.2d 1092 (1994).

Ohio's state statutory scheme regulating parking does not hinder the rights of municipalities to simultaneously regulate parking. Zilba v. City of Port Clinton, Ohio, 924 F. Supp. 2d 867 (N.D. Ohio 2013).

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## 7A Am. Jur. 2d Automobiles § 306

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### E. Parking or Standing

##### 1. In General

## § 306. Definitions and distinctions in parking and standing regulations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  5(3), 12, 119, 333, 334

The term “parking,” as applied to motor vehicles, is understood to include not only the voluntary act of leaving a vehicle on the street unattended, but also the stopping or standing of a vehicle on the street, even though occupied and attended, for a length of time which is inconsistent with a reasonable use of the street.<sup>1</sup> There is, however, a distinction between the terms “parking” and “stopping or standing” with regard to a motor vehicle, in that the first term includes the second, whereas “stopping or standing” does not necessarily result in “parking.”<sup>2</sup> A statute prohibiting the stopping or parking of motor vehicles upon a roadway, without leaving an unobstructed pathway opposite the standing vehicle, does not apply to a momentary stopping of a motor vehicle on the highway but applies to situations where the stopping or parking impedes the safe flow of traffic.<sup>3</sup>

While a temporary halt, unless justified, may be included under the usual statutory prohibition as to parking, stopping, or leaving standing a vehicle on a highway,<sup>4</sup> the term “parked” is not susceptible of a meaning indicating a momentary hesitation while one is changing direction of a vehicle,<sup>5</sup> and stopping at a curb for the purpose of taking in or letting out passengers or occupants of a car is not parking.<sup>6</sup> In particular, under some statutes, the terms “park” or “parking” may be defined or construed so as to exclude temporary stopping for the purpose of and while actually engaged in loading or unloading merchandise or passengers.<sup>7</sup> The exclusion afforded temporary stopping under such a statute does not apply to one who stops a vehicle and spends time in a nearby store making a purchase before loading such purchase.<sup>8</sup> However, under some statutes, the term “park,” when prohibited, includes the standing of a vehicle.<sup>9</sup> The provisions of a statute governing stopping, standing, or parking outside business or residence districts do not apply to a disabled vehicle if it is impossible to avoid stopping on the main traveled portion of the highway.<sup>10</sup> However, a statute permitting a disabled vehicle owner to park for unlimited periods “in any parking zone that is restricted as to the length of time parking is permitted as indicated by a sign erected pursuant to a local ordinance” does not allow the owner to park the vehicle for an unlimited period on a city street which does not have a posted sign limiting street parking, in light of a municipal ordinance prohibiting vehicle street parking on any street for more than 72 consecutive hours.<sup>11</sup>

The term “overnight parking” in an ordinance prohibiting such parking is not a technical term subject to absolute delineation by hours and minutes.<sup>12</sup> The term “parking” has in it the element of a motor vehicle in use being only temporarily placed, and when a vehicle is left for months at a given place, it is stored and not parked.<sup>13</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Notice provisions of small claims court information document did not violate due process rights of those who received parking tickets when city had installed pay machines, but when ordinance still defined parking infractions by reference to parking meters; while recipients claimed that document misled them into believing their only recourse to contest hearing officer’s adverse determination was to appear in small claims court and that, if they did not prevail, they would be exposed to litigation costs and adverse credit report, even though document might have overstated consequences of failing to prevail in challenge to ticket, it did not do so in way that undermined recipients’ right to hearing, and, on claim that document stated that recipients were allowed to challenge tickets on limited number of legal grounds, they did not claim they were misled by document, as one recipient actually argued to small claims court that parking without paying at pay station did not violate city code. [Utah Const. art. 1, § 7](#). [Bivens v. Salt Lake City Corporation, 2017 UT 67, 416 P.3d 338 \(Utah 2017\)](#).

## [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> [Northern Indiana Transit, Inc. v. Burk, 228 Ind. 162, 89 N.E.2d 905, 17 A.L.R.2d 572 \(1950\); Naylor v. Dragoon, 116 Vt. 552, 80 A.2d 600 \(1951\).](#)
- <sup>2</sup> [Northern Indiana Transit, Inc. v. Burk, 228 Ind. 162, 89 N.E.2d 905, 17 A.L.R.2d 572 \(1950\).](#)
- <sup>3</sup> [Cox v. Allen, 256 Ga. App. 53, 567 S.E.2d 363 \(2002\).](#)
- <sup>4</sup> [Danley v. Cooper, 62 Wash. 2d 179, 381 P.2d 747 \(1963\).](#)
- <sup>5</sup> [Hartsock v. George, 59 Ohio App. 249, 12 Ohio Op. 523, 27 Ohio L. Abs. 65, 17 N.E.2d 667 \(1st Dist. Butler County 1938\).](#)
- <sup>6</sup> [Ford v. Stevens, 280 Minn. 16, 157 N.W.2d 510 \(1968\) \(the term “park” connotes the vehicle remaining in place for at least an appreciable length of time\).](#)
- <sup>7</sup> [Lacour v. Continental Southern Lines, Inc., 124 So. 2d 588 \(La. Ct. App. 1st Cir. 1960\); Naylor v. Dragoon, 116 Vt. 552, 80 A.2d 600 \(1951\).](#)
- <sup>8</sup> [People v. Baxter, 32 N.Y.S.2d 320 \(N.Y. City Ct. 1941\), judgment aff’d, 178 Misc. 625, 36 N.Y.S.2d 1020 \(County Ct. 1942\).](#)
- <sup>9</sup> [Barber v. City of Charleston, 2014 WL 1345491 \(W. Va. 2014\).](#)
- <sup>10</sup> [Lino v. Allstate Ins. Co., 937 So. 2d 888 \(La. Ct. App. 4th Cir. 2006\), writ denied, 942 So. 2d 542 \(La. 2006\).](#)
- <sup>11</sup> [Spicer v. City of Camarillo, 195 Cal. App. 4th 1423, 125 Cal. Rptr. 3d 357 \(2d Dist. 2011\).](#)
- <sup>12</sup> [Facci v. City of Schenectady, 13 Misc. 2d 247, 176 N.Y.S.2d 827 \(Sup 1957\).](#)

<sup>13</sup> Incorporated Village of Great Neck v. Green, 8 Misc. 2d 356, 166 N.Y.S.2d 219 (Sup 1957), judgment aff'd, 5 A.D.2d 779, 170 N.Y.S.2d 297 (2d Dep't 1958).



## 7A Am. Jur. 2d Automobiles § 307

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### E. Parking or Standing

##### 1. In General

## § 307. Notice of parking regulations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  12, 333, 334

Since, in the absence of a prohibitory statute or ordinance, the parking or standing of vehicles upon a public highway or street constitutes a lawful use of the highway or street, it is generally required that, in areas of restricted parking, proper signs giving notice thereof, be posted.<sup>1</sup> Where a statute or ordinance requires official signs giving notice of parking regulations, such signs are mandatory, and the posting thereof must be shown to sustain a conviction for violation of the regulation.<sup>2</sup> In the absence of an express provision in a statute or ordinance requiring the posting of parking regulations, however, the necessity for notice is a matter of administrative or legislative judgment with which the courts will not concern themselves, notwithstanding the public's habit of relying on signs of that character in actual practice,<sup>3</sup> and the fact that the regulatory agency has posted notice of area-wide parking restrictions in some of the areas within its jurisdiction and not in others does not render unconstitutional a conviction for parking in an unposted area,<sup>4</sup> particularly where the regulation is uniform throughout the jurisdiction of the regulatory body.<sup>5</sup>

The general authority of a municipality to regulate the nonconsensual towing from private lots was broad enough to sustain the municipal towing ordinance's notice and signage requirements; the municipality asserted that the notice and signage requirements were intended to ensure that drivers were on notice, to inform car owners of the location of their vehicles, and to prevent conflicts between citizens and tow truck operators.<sup>6</sup>

A statute prohibiting parking in a space reserved for a handicapped person may expressly require posting a notice of the maximum and minimum fine, and the possibility of towing; and in the absence of such a sign, parking in the space does not constitute the offense of illegally parking in a handicapped space.<sup>7</sup> Courtesy notices placed on windshields of a disabled vehicle owner's vehicles did not constitute "a sign erected pursuant to local ordinance" within the meaning of a statute permitting a disabled vehicle owner to park for unlimited periods "in any parking zone that is restricted as to the length of time parking is permitted as indicated by a sign erected pursuant to a local ordinance."<sup>8</sup>

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Footnotes

- <sup>1</sup> [People on Complaint of Mihalik v. Lapidus](#), 26 Misc. 2d 112, 209 N.Y.S.2d 412 (Police Ct. 1961).
- <sup>2</sup> [State v. Nam Sing Shak](#), 49 Haw. 619, 425 P.2d 591 (1967).
- <sup>3</sup> [State v. Perry](#), 269 Minn. 204, 130 N.W.2d 343 (1964) (failure to post “no parking” sign not an impediment to enforcement of parking ordinance).
- <sup>4</sup> [State v. Perry](#), 269 Minn. 204, 130 N.W.2d 343 (1964).
- <sup>5</sup> [City of East Cleveland v. Palmer](#), 40 Ohio App. 2d 10, 69 Ohio Op. 2d 6, 317 N.E.2d 246 (8th Dist. Cuyahoga County 1974) (municipal ordinance banning overnight parking on a community-wide basis is not unconstitutional for failure to post signs informing persons of the ban).
- <sup>6</sup> [King v. Town of Chapel Hill](#), 367 N.C. 400, 758 S.E.2d 364 (2014).
- <sup>7</sup> [Com. v. Lundberg](#), 772 A.2d 1037 (Pa. Super. Ct. 2001).
- <sup>8</sup> [Spicer v. City of Camarillo](#), 195 Cal. App. 4th 1423, 125 Cal. Rptr. 3d 357 (2d Dist. 2011).

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## 7A Am. Jur. 2d Automobiles § 308

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration


#### E. Parking or Standing

##### 1. In General

## § 308. Parking restrictions or prohibitions discriminating in favor of residents or other designated groups

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  12, 333, 334

### A.L.R. Library

[Validity of regulation providing for reserved parking spaces or parking priority on publicly owned property for members of a designated group, 70 A.L.R.3d 1323](#)

Localities may enact parking restrictions or prohibitions which discriminate in favor of residents of the particular area and against nonresidents thereof,<sup>1</sup> including, for example, prohibiting parking within a restricted area during specified hours, except by permit, where permits are freely issued to residents or certain other persons.<sup>2</sup> Such ordinances do not, on their face, violate constitutional equal-protection principles,<sup>3</sup> such discrimination being valid where it is rationally related to legitimate public interests.<sup>4</sup> However, where the local ordinance is in conflict with state law prohibiting localities from excluding persons from the free use of the highways, it is not a valid exercise of the village's police power and is void.<sup>5</sup>

Reserved parking spaces for public officials and employees may be valid, both off-street<sup>6</sup> and on-street.<sup>7</sup> Thus, municipal parking regulations setting aside certain areas for vehicles bearing diplomatic plates or operated by certain government officials do not violate constitutional principles of equal protection.<sup>8</sup>

Footnotes

- <sup>1</sup> County Bd. of Arlington County, Va. v. Richards, 434 U.S. 5, 98 S. Ct. 24, 54 L. Ed. 2d 4 (1977); Com. v. Petralia, 372 Mass. 452, 362 N.E.2d 513 (1977); State v. Whisman, 24 Ohio Misc. 59, 53 Ohio Op. 2d 102, 263 N.E.2d 411 (C.P. 1970).
- <sup>2</sup> County Bd. of Arlington County, Va. v. Richards, 434 U.S. 5, 98 S. Ct. 24, 54 L. Ed. 2d 4 (1977).
- <sup>3</sup> County Bd. of Arlington County, Va. v. Richards, 434 U.S. 5, 98 S. Ct. 24, 54 L. Ed. 2d 4 (1977).
- <sup>4</sup> County Bd. of Arlington County, Va. v. Richards, 434 U.S. 5, 98 S. Ct. 24, 54 L. Ed. 2d 4 (1977); Com. v. Petralia, 372 Mass. 452, 362 N.E.2d 513 (1977).  
The rational basis test applied to an equal protection challenge to a city ordinance requiring motor scooter owners to purchase a permit to park in the city's traditional permit parking area, and requiring the designation of certain parking areas exclusively for scooters with permits, since the ordinance neither burdened a fundamental right nor targeted a suspect class. *Myslewski v. City of Rehoboth Beach*, 987 F. Supp. 2d 499 (D. Del. 2013).
- <sup>5</sup> *People v. Speakerkits, Inc.*, 83 N.Y.2d 814, 611 N.Y.S.2d 488, 633 N.E.2d 1092 (1994).
- <sup>6</sup> *City of Madison v. McManus*, 44 Wis. 2d 396, 171 N.W.2d 426 (1969).
- <sup>7</sup> *Com. v. Sargent*, 330 Mass. 690, 117 N.E.2d 154 (1953).
- <sup>8</sup> *Friedman v. Beame*, 558 F.2d 1107 (2d Cir. 1977).

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## 7A Am. Jur. 2d Automobiles § 309

American Jurisprudence, Second Edition | May 2021 Update

### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### E. Parking or Standing

##### 1. In General

## § 309. Parking restrictions or prohibitions discriminating in favor of residents or other designated groups—Designated handicapped spaces

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  12, 333, 334

### A.L.R. Library

[Validity of regulation providing for reserved parking spaces or parking priority on publicly owned property for members of a designated group, 70 A.L.R.3d 1323](#)

Parking spaces may be specifically reserved for persons with disabilities.<sup>1</sup> The government can enforce handicapped-parking-zone regulations whether a disabled person's vehicle is present or not.<sup>2</sup> However, the statute authorizing such restrictions may require that such spaces be specially marked with notice of the minimum and maximum fine that may be imposed.<sup>3</sup>

While the general definition of "park" pursuant to statutory provisions regulating traffic on the highways generally may allow for temporary parking for loading and unloading, that definition does not apply to the meaning of a part in a statute prescribing unlawful parking in a designated handicapped space; an offense may occur even though the defendant's vehicle occupied the designated space for a brief time to unload items.<sup>4</sup>

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#### Footnotes

<sup>1</sup> State v. Kortkamp, 633 N.W.2d 863 (Minn. Ct. App. 2001); Com. v. Lundberg, 772 A.2d 1037 (Pa. Super. Ct. 2001); Clemson University v. Speth, 344 S.C. 310, 543 S.E.2d 572 (Ct. App. 2001).

<sup>2</sup> State v. Kortkamp, 633 N.W.2d 863 (Minn. Ct. App. 2001).

<sup>3</sup> Com. v. Lundberg, 772 A.2d 1037 (Pa. Super. Ct. 2001).

<sup>4</sup> Clemson University v. Speth, 344 S.C. 310, 543 S.E.2d 572 (Ct. App. 2001).  
As to definition of “park,” generally, see § 306.

## 7A Am. Jur. 2d Automobiles § 310

American Jurisprudence, Second Edition | May 2021 Update

### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration


#### E. Parking or Standing

##### 1. In General

## § 310. Parking meters

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  12, 333

### A.L.R. Library

[Permissible use of funds from parking meters, 83 A.L.R.2d 625](#)

Municipal corporations in the various states are generally empowered, or deemed to be empowered, to purchase, install, and operate parking meters, by express statutory provision,<sup>1</sup> or by virtue of the power of the municipality to regulate traffic or parking on its streets,<sup>2</sup> or as a proper exercise of the police power of the municipality.<sup>3</sup> Parking meter ordinances have generally been held valid against the contention that they deprive abutting owners of their property rights without due process of law,<sup>4</sup> at least where such abutting owners, and persons doing business with them, are permitted to load or unload passengers or freight abutting their premises without payment of the parking meter fee.<sup>5</sup> The validity of parking meter ordinances has generally been upheld against various contentions that they conflict with or are repugnant to legislative enactments governing motor vehicles.<sup>6</sup>

A parking meter ordinance which makes it unlawful to have a vehicle in a parking space when the meter signal indicates that the space is illegally in use, other than such time as is necessary to operate the meter to show legal parking, is not so vague and indefinite as to violate due process.<sup>7</sup> Such an ordinance is not violated by merely driving into a parking space while the meter signal indicates that the space is illegally in use, but may be violated by driving into such a parking space and departing to obtain coins.<sup>8</sup>

Insofar as ordinances providing for the installation and use of coin-operated parking meters constitute an exercise of the police power of the municipality, however, they must be reasonable,<sup>9</sup> and the fees exacted must, in the absence of any constitutional or statutory authority to the contrary, have a relationship to defraying the expenses incidental to the regulation of parking.<sup>10</sup> Where the charge for the use of parking meters is an excise tax for the privilege of using parking space on the public streets, the ordinance is an invalid revenue measure.<sup>11</sup> The fact that some revenue results to the municipality does not make an ordinance providing for parking meters an invalid revenue measure, where the income therefrom is designed, and is not more than is reasonably necessary, to accomplish the objectives of the regulation.<sup>12</sup>

To establish that a parking meter ordinance is a revenue measure, and hence invalid, it must appear that the scheme of the ordinance is such that receipts will continuously and by a substantial amount exceed the cost of installation, maintenance, and regulation.<sup>13</sup> The fact that such an ordinance contemplates the use of meter receipts for the broad purpose of traffic control and regulation, and does not restrict their use to the operation of the meter system, does not make it a revenue measure.<sup>14</sup> Nor, on the other hand, is the lack of profit from the operation of parking meters a valid reason for their removal, on a petition for that purpose brought by citizens and taxpayers.<sup>15</sup>

Citizens were entitled to know that new parking stations were being used to issue citations for parking violations, in lieu of coin-operated meters, and thus, a city ordinance that changed the parking meter system throughout the city could only be applied prospectively, even though the ordinance expressly stated it was to be applied retroactively.<sup>16</sup>

Parking meter charges may be exacted to help finance off-street facilities without offending the principle that such exactions may not be made as a revenue measure in the guise of regulation.<sup>17</sup> Thus, for example, funds derived from parking meters may be used to retire revenue bonds issued for construction of off-street parking after such funds had been used for payment of the cost of meters, the cost of maintenance of meters, and payment for parking or traffic control devices on portions of a street equipped with parking meters, provided that total expenditures for the latter two items should not exceed 25% of the total meter income.<sup>18</sup> The expenditure of funds for off-street facilities may be justified on the basis that the operation of on-street and off-street facilities may be combined as one undertaking, and that the pledge of on-street parking-meter revenues to secure revenue bonds for this purpose is proper.<sup>19</sup> However, the validity of such expenditures may be dependent on the construction of applicable constitutional or statutory provisions in the particular state,<sup>20</sup> and in some cases, the use of such revenues may be deemed not sufficiently related to parking regulation to be upheld.<sup>21</sup>

The fact that a motorist's normal parking spot was inaccessible and a police officer directed him away from it did not provide the motorist with a legal excuse to not pay for metered parking.<sup>22</sup>

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#### Footnotes

- <sup>1</sup> [Petition of City of Liberty, 296 S.W.2d 117 \(Mo. 1956\); City of Rapid City v. Rensch, 77 S.D. 242, 90 N.W.2d 380 \(1958\).](#)
- <sup>2</sup> [City of Rapid City v. Rensch, 77 S.D. 242, 90 N.W.2d 380 \(1958\).](#)
- <sup>3</sup> [City of Decatur v. Robinson, 251 Ala. 99, 36 So. 2d 673 \(1948\); City of Rapid City v. Rensch, 77 S.D. 242, 90 N.W.2d 380 \(1958\).](#)
- <sup>4</sup> [Harper v. City of Wichita Falls, 105 S.W.2d 743 \(Tex. Civ. App. Fort Worth 1937\), writ refused.](#)
- <sup>5</sup> [Hickey v. Riley, 177 Or. 321, 162 P.2d 371 \(1945\).](#)
- <sup>6</sup> [City of Bloomington v. Wirrick, 381 Ill. 347, 45 N.E.2d 852 \(1942\); Bowers v. City of Muskegon, 305 Mich. 676, 9 N.W.2d 889 \(1943\).](#)
- <sup>7</sup> [City of Rapid City v. Rensch, 77 S.D. 242, 90 N.W.2d 380 \(1958\).](#)
- <sup>8</sup> [City of Rapid City v. Rensch, 77 S.D. 242, 90 N.W.2d 380 \(1958\).](#)



- 9 State v. Scoggin, 236 N.C. 1, 72 S.E.2d 97 (1952).
- 10 Andrews v. City of Marion, 221 Ind. 422, 47 N.E.2d 968 (1943).
- 11 City of Decatur v. Robinson, 251 Ala. 99, 36 So. 2d 673 (1948).
- 12 City of Rapid City v. Rensch, 77 S.D. 242, 90 N.W.2d 380 (1958).
- 13 Ashley v. City of Greensboro, 206 Ga. 800, 58 S.E.2d 815 (1950).
- 14 City of Rapid City v. Rensch, 77 S.D. 242, 90 N.W.2d 380 (1958).
- 15 Ashley v. City of Greensboro, 206 Ga. 800, 58 S.E.2d 815 (1950).
- 16 Smith v. City of New Orleans ex rel. Shires, 71 So. 3d 525 (La. Ct. App. 4th Cir. 2011).
- 17 Lynn v. City of Fort Lauderdale, 81 So. 2d 511 (Fla. 1955); City of Hutchinson v. Harrison, 173 Kan. 18, 244 P.2d 222 (1952); Sammons v. City of Beaufort, 225 S.C. 490, 83 S.E.2d 153 (1954).
- 18 Douglass v. Iowa City, 218 N.W.2d 908 (Iowa 1974).
- 19 Baltimore County Revenue Authority v. Baltimore County, 216 Md. 553, 141 A.2d 147 (1958).
- 20 City of La Mesa v. Freeman, 137 Cal. App. 2d 813, 291 P.2d 103 (4th Dist. 1955); State v. City of West Palm Beach, 125 So. 2d 568 (Fla. 1960); Cherry v. City of Rock Island, 8 Ill. 2d 97, 132 N.E.2d 536 (1956).
- 21 City of Panama City v. State, 60 So. 2d 658 (Fla. 1952) (bonds for paving and improvement of streets); Chase v. City of Sanford, 54 So. 2d 370 (Fla. 1951) (bond issue for construction and operation of port terminal facilities by city).
- 22 Gilday v. City of Indianapolis, 54 N.E.3d 378 (Ind. Ct. App. 2016).

## 7A Am. Jur. 2d Automobiles § 311

American Jurisprudence, Second Edition | May 2021 Update

### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration


#### E. Parking or Standing

##### 1. In General

## § 311. Starting or moving vehicle from parked or standing position

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  12, 333

### A.L.R. Library

[Liability for injury or damage growing out of pulling out of parked motor vehicle, 29 A.L.R.2d 107](#)

### Forms

Forms regarding parked vehicles, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic [\[Westlaw®\(r\) Search Query\]](#)

A person moving a motor vehicle from a parked or standing position has the duty, which is usually imposed by statute or ordinance, to keep a proper lookout for approaching traffic,<sup>1</sup> and to yield the right of way to passing motorists or pedestrians,<sup>2</sup> and not to make the move until it can be made with reasonable safety.<sup>3</sup>

As a signal is required by a state signal statute only to indicate an intention to turn, change lanes, or start from a parked position, no signal is required when two road lanes become one.<sup>4</sup>

Where a motorist is backing out of a parking space at the curb, the statutory requirement imposes upon the motorist the duty to look in all directions from which a traveler might be expected, not only before the motorist begins to back up but also while in the act of backing, and the motorist has no right to assume that the road is clear in any direction but should anticipate and expect the presence of others.<sup>5</sup>

A motorist moving a motor vehicle from a parked or standing position also has the duty, which is usually imposed by statute or ordinance, to give pedestrians or other motorists who may be affected by his or her movement a signal or warning of his or her intention.<sup>6</sup>

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#### Footnotes

- <sup>1</sup> [Spackman v. Carson](#), 117 Utah 390, 216 P.2d 640 (1950).
- <sup>2</sup> [McBride v. Woods](#), 124 Colo. 384, 238 P.2d 183, 29 A.L.R.2d 101 (1951); [Clay v. Sammons](#), 239 S.W.2d 927 (Ky. 1951).
- <sup>3</sup> [Irwin v. Mucha](#), 154 A.D.2d 895, 545 N.Y.S.2d 863 (4th Dep't 1989); [Roadman v. Bellone](#), 379 Pa. 483, 108 A.2d 754 (1954).
- <sup>4</sup> [Mahaffey v. State](#), 364 S.W.3d 908 (Tex. Crim. App. 2012).
- <sup>5</sup> [Lee v. Donnelly](#), 95 Vt. 121, 113 A. 542 (1921).  
As to the regulation of backing of motor vehicles, generally, see § 229.
- <sup>6</sup> [McBride v. Woods](#), 124 Colo. 384, 238 P.2d 183, 29 A.L.R.2d 101 (1951); [Labreque v. Childs](#), 94 N.H. 451, 55 A.2d 473 (1947).

## 7A Am. Jur. 2d Automobiles § 312

American Jurisprudence, Second Edition | May 2021 Update

### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration


#### E. Parking or Standing

##### 1. In General

## § 312. Parking rights of abutting owners

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  12, 333

As a general proposition, an abutting property owner has the right to park a reasonable number of the owner's own vehicles in the street in front of the owner's premises in a reasonable manner,<sup>1</sup> although the owner has no more right to park in front of the owner's property than any other member of the public at large.<sup>2</sup> Such abutting property owners cannot prevent others from also parking vehicles in front of their property,<sup>3</sup> except insofar as the vehicles unreasonably interfere with their right of ingress and egress,<sup>4</sup> and therefore they have no right to grant to another the exclusive privilege, as against the public, of parking on the street in front of their property.<sup>5</sup>

The rights of abutting property owners with respect to parking in the public ways adjoining their property are subject to reasonable regulation by the proper public authorities.<sup>6</sup> The fact that parking is restricted in front of one's property does not prevent such person or the person's tenants, or persons doing business with such person, from temporarily parking for the purpose of loading or unloading merchandise or passengers,<sup>7</sup> and a parking regulation which purports to do so is invalid.<sup>8</sup>

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#### Footnotes

<sup>1</sup> [City of Birmingham v. Hood-McPherson Realty Co.](#), 233 Ala. 352, 172 So. 114, 108 A.L.R. 1140 (1937) (overruled in part on other grounds by, [City of Decatur v. Robinson](#), 251 Ala. 99, 36 So. 2d 673 (1948)); [City of New Orleans v. Badie](#), 146 La. 550, 83 So. 826 (1920).

<sup>2</sup> [Andrews v. City of Marion](#), 221 Ind. 422, 47 N.E.2d 968 (1943).  
As to parking restrictions or prohibitions discriminating in favor of residents, see [§ 308](#).

- <sup>3</sup> Park Hotel Co. v. Ketchum, 184 Wis. 182, 199 N.W. 219, 33 A.L.R. 351 (1924).
- <sup>4</sup> Bryer v. Terleph, 69 A.D.3d 894, 893 N.Y.S.2d 281 (2d Dep't 2010).
- <sup>5</sup> Waldorf-Astoria Hotel Co. v. City of New York, 212 N.Y. 97, 105 N.E. 803 (1914); Park Hotel Co. v. Ketchum, 184 Wis. 182, 199 N.W. 219, 33 A.L.R. 351 (1924).
- <sup>6</sup> Andrews v. City of Marion, 221 Ind. 422, 47 N.E.2d 968 (1943); Hickey v. Riley, 177 Or. 321, 162 P.2d 371 (1945).
- <sup>7</sup> Andrews v. City of Marion, 221 Ind. 422, 47 N.E.2d 968 (1943).
- <sup>8</sup> Salomone v. City of Canton, 30 Ill. App. 2d 474, 175 N.E.2d 663 (3d Dist. 1961).

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## 7A Am. Jur. 2d Automobiles § 313

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### E. Parking or Standing

##### 1. In General

## § 313. Removal and impounding of illegally parked vehicles

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  12, 333, 334

### A.L.R. Library

[State or municipal towing, impounding, or destruction of motor vehicles parked or abandoned on streets or highways, 32 A.L.R.4th 728](#)

[Lien for towing or storage, ordered by public officer, of motor vehicle, 85 A.L.R.3d 199](#)

[Lawfulness of "inventory search" of motor vehicle impounded by police, 48 A.L.R.3d 537](#)

A municipality may by ordinance validly authorize its officers summarily, and without judicial process, to impound automobiles left unattended in the streets in violation of parking regulations,<sup>1</sup> and may subject the owners to a reasonable fee commensurate with the cost of enforcement and removal, or authorize the appropriate enforcement officer to fix such fee.<sup>2</sup> The authority of the police to impound vehicles derives from the police's reasonable community care-taking functions, including the removal of disabled or damaged vehicles from the highway, and impounding automobiles which violate parking ordinances and thereby jeopardize public safety and efficient traffic flow.<sup>3</sup>

It is considered unreasonable and impractical to require that municipal removal of such vehicle be only by judicial proceeding;<sup>4</sup> therefore, ordinances may authorize public officials to summarily immobilize<sup>5</sup> or impound unattended, illegally parked vehicles.<sup>6</sup> Ordinarily, a motorist has no right to notice and hearing prior to the towing of the motorist's vehicle in violation of traffic regulations,<sup>7</sup> and the authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety is beyond challenge.<sup>8</sup>

While statutes and ordinances authorizing the towing of illegally parked automobiles, or their enforcement, have been upheld against equal-protection attacks,<sup>9</sup> as well as against contentions that the police were without authority to tow or impound automobiles which were illegally parked,<sup>10</sup> a towing ordinance may be overbroad in certain instances, such that the failure to provide for prior notice and the opportunity for a hearing may violate a person's right to due process.<sup>11</sup>

However, a municipality does not violate a motorist's due-process rights by towing an illegally parked automobile and demanding the payment of a tow fee and parking fine prior to its release, where the towing is a legitimate exercise of police power, where the parking regulations are clearly posted at the site of the violation, and where a hearing on the propriety of the underlying parking violation, with reimbursement of fees flowing from acquittal, is available virtually on demand during business hours.<sup>12</sup> Thus, it is not a violation of due process to refuse returning an automobile until payment of the towing charges and storage fees where the statute provides for a postseizure hearing within 48 hours, and for release of the vehicle without the payment of towing and storage fees if it is found that there was an insufficient factual or legal basis for impounding the vehicle.<sup>13</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Pre-towing notice to a motor vehicle owner is presumptively required by due process. [U.S. Const. Amend. 14](#). [Grimm v. City of Portland](#), 971 F.3d 1060 (9th Cir. 2020).

## [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> [Sutton v. City of Milwaukee](#), 672 F.2d 644 (7th Cir. 1982); [Goichman v. City of Aspen](#), 859 F.2d 1466 (10th Cir. 1988); [Remm v. Landrieu](#), 418 F. Supp. 542 (E.D. La. 1976); [Cohen v. City of New York](#), 69 Misc. 2d 189, 329 N.Y.S.2d 596 (N.Y. City Civ. Ct. 1972).
- <sup>2</sup> [Goichman v. City of Aspen](#), 859 F.2d 1466 (10th Cir. 1988).
- <sup>3</sup> [Com. v. Henley](#), 2006 PA Super 276, 909 A.2d 352 (2006).
- <sup>4</sup> [Park v. Adams](#), 289 S.W.2d 829 (Tex. Civ. App. Waco 1956).
- <sup>5</sup> See [Baker v. City of Iowa City](#), 260 N.W.2d 427 (Iowa 1977).
- <sup>6</sup> [Sutton v. City of Milwaukee](#), 672 F.2d 644 (7th Cir. 1982); [Remm v. Landrieu](#), 418 F. Supp. 542 (E.D. La. 1976).
- <sup>7</sup> [Cokinos v. District of Columbia](#), 728 F.2d 502 (D.C. Cir. 1983).
- <sup>8</sup> [South Dakota v. Opperman](#), 428 U.S. 364, 96 S. Ct. 3092, 49 L. Ed. 2d 1000 (1976).
- <sup>9</sup> [Sutton v. City of Milwaukee](#), 672 F.2d 644 (7th Cir. 1982).
- <sup>10</sup> [Goichman v. City of Aspen](#), 859 F.2d 1466 (10th Cir. 1988).
- <sup>11</sup> [Hale v. Tyree](#), 491 F. Supp. 622 (E.D. Tenn. 1979).
- <sup>12</sup> [Goichman v. City of Aspen](#), 859 F.2d 1466 (10th Cir. 1988).

<sup>13</sup> [Goichman v. Rheuban Motors, Inc., 682 F.2d 1320 \(9th Cir. 1982\).](#)

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## 7A Am. Jur. 2d Automobiles § 314

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration


#### E. Parking or Standing

#### 2. Place and Manner of Parking or Standing

## § 314. Place and manner of parking or standing, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  12, 333

### A.L.R. Library

[Parking illegally at or near street corner or intersection as affecting liability for motor vehicle accident, 4 A.L.R.3d 324](#)

[Construction and effect in civil actions of statute, ordinance, or regulation requiring vehicles to be stopped or parked parallel with, and within certain distance of, curb, 17 A.L.R.2d 582](#)

### Forms

Forms regarding parking, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic  
[\[Westlaw®\(r\) Search Query\]](#)

The governmental power to regulate the parking of motor vehicles includes the power to regulate the place and manner of such parking.<sup>1</sup> Regulations generally require vehicles to be parked on the right-hand side of the roadway headed in the direction of lawful traffic movement, and prohibit parking on the left side of the road.<sup>2</sup>

Regulations relating to the parking of motor vehicles may entirely prohibit angle parking and require that vehicles be parked

parallel and next to the curb,<sup>3</sup> or within a specified distance of it.<sup>4</sup> The purpose of such regulations is to prohibit the occupation of an unreasonable portion of the street and thereby give moving traffic as much space as possible,<sup>5</sup> and also to ensure the safety of the public.<sup>6</sup>

Regulations prohibiting angle parking may be particularly applicable to motorbuses because of their length.<sup>7</sup> In some cases, such regulations are not necessarily limited to where vehicles are parked and left unattended or are permanently parked in the sense that they are taken out of the flow of traffic for a substantial length of time, but also apply to vehicles which are stopped for the purpose of receiving or discharging passengers,<sup>8</sup> since the danger to the traveling public may arise from the stopping in an unreasonable manner even if for less time than what would constitute parking;<sup>9</sup> however, in other instances, such regulations are not applicable to brief stops, such as for allowing passengers to board or alight.<sup>10</sup>

Statutes or ordinances have been enacted in a number of jurisdictions which prohibit parking within an intersection or within a specified number of feet thereof.<sup>11</sup> The purpose of such regulations is to prevent motor vehicles from blocking the view of other motorists entering the intersection, and to keep the way clear for pedestrians.<sup>12</sup> Such a regulation does not apply to a bus company which has stops at intersections, almost invariably within the prohibited distance of the intersection.<sup>13</sup>

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#### Footnotes

- <sup>1</sup> [Vandenack v. Crosby](#), 275 Wis. 421, 82 N.W.2d 307 (1957).
- <sup>2</sup> [Vandenack v. Crosby](#), 275 Wis. 421, 82 N.W.2d 307 (1957).
- <sup>3</sup> [Trailer v. Schelm](#), 227 Iowa 780, 288 N.W. 865 (1939).
- <sup>4</sup> [Northern Indiana Transit, Inc. v. Burk](#), 228 Ind. 162, 89 N.E.2d 905, 17 A.L.R.2d 572 (1950); [Woody v. Cope](#), 207 Tenn. 78, 338 S.W.2d 551, 4 A.L.R.3d 314 (1960).
- <sup>5</sup> [Northern Indiana Transit, Inc. v. Burk](#), 228 Ind. 162, 89 N.E.2d 905, 17 A.L.R.2d 572 (1950).
- <sup>6</sup> [Boronkay v. Robinson & Carpenter](#), 247 N.Y. 365, 160 N.E. 400 (1928).
- <sup>7</sup> [Northern Indiana Transit, Inc. v. Burk](#), 228 Ind. 162, 89 N.E.2d 905, 17 A.L.R.2d 572 (1950).
- <sup>8</sup> [Matthews v. Mound City Cab Co.](#), 205 S.W.2d 243 (Mo. Ct. App. 1947).
- <sup>9</sup> [Northern Indiana Transit, Inc. v. Burk](#), 228 Ind. 162, 89 N.E.2d 905, 17 A.L.R.2d 572 (1950).
- <sup>10</sup> [Lacour v. Continental Southern Lines, Inc.](#), 124 So. 2d 588 (La. Ct. App. 1st Cir. 1960); [Hochberger v. G. R. Wood, Inc.](#), 124 N.J.L. 518, 12 A.2d 689 (N.J. Ct. Err. & App. 1940).
- <sup>11</sup> [People v. Garth](#), 234 Cal. App. 3d 1797, 286 Cal. Rptr. 451 (2d Dist. 1991); [Woody v. Cope](#), 207 Tenn. 78, 338 S.W.2d 551, 4 A.L.R.3d 314 (1960).
- <sup>12</sup> [Woody v. Cope](#), 207 Tenn. 78, 338 S.W.2d 551, 4 A.L.R.3d 314 (1960).
- <sup>13</sup> [Woody v. Cope](#), 207 Tenn. 78, 338 S.W.2d 551, 4 A.L.R.3d 314 (1960).

## 7A Am. Jur. 2d Automobiles § 315

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### Automobiles and Highway Traffic

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### E. Parking or Standing

##### 2. Place and Manner of Parking or Standing

## § 315. Setting brakes; turning wheels to curb

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  12, 333, 334

### A.L.R. Library

[Failure of motorist to cramp wheels against curb or turn them away from traffic, or to shut off engine, as causing accidental starting up of parked motor vehicle, 42 A.L.R.3d 1283](#)

[Failure to set brakes, or maintain adequate brakes, as causing accidental runaway of parked motor vehicle, 42 A.L.R.3d 1252](#)

### Forms

Forms regarding brakes, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic [\[Westlaw®\(r\) Search Query\]](#)

Many jurisdictions have adopted regulations requiring motorists leaving a motor vehicle unattended upon a perceptible grade to set the emergency brakes,<sup>1</sup> and to turn the front wheels to the curb or side of the highway.<sup>2</sup>

Such regulations are intended as safety measures and, since they reasonably contribute to that end, they are presumed to be

valid.<sup>3</sup>

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Footnotes

- <sup>1</sup> [Lewis v. Wolk](#), 312 Ky. 536, 228 S.W.2d 432, 16 A.L.R.2d 974 (1950); [Hochschild, Kohn & Co. v. Canoles](#), 193 Md. 276, 66 A.2d 780 (1949).
- <sup>2</sup> [Riley v. Larson](#), 91 Idaho 831, 432 P.2d 775, 42 A.L.R.3d 1274 (1967); [Lewis v. Wolk](#), 312 Ky. 536, 228 S.W.2d 432, 16 A.L.R.2d 974 (1950); [People v. Hammond](#), 14 Misc. 2d 607, 183 N.Y.S.2d 426 (N.Y. City Ct. 1958), judgment aff'd, 15 Misc. 2d 724, 182 N.Y.S.2d 859 (County Ct. 1959); [Farrish v. VanFossen](#), 212 Va. 815, 188 S.E.2d 201 (1972).  
The mere performance of the act of setting the brakes does not constitute compliance with such a regulation, unless it is effectively done to make certain that the vehicle will remain immobile. [Lewis v. Wolk](#), 312 Ky. 536, 228 S.W.2d 432, 16 A.L.R.2d 974 (1950).
- <sup>3</sup> [People v. Hammond](#), 14 Misc. 2d 607, 183 N.Y.S.2d 426 (N.Y. City Ct. 1958), judgment aff'd, 15 Misc. 2d 724, 182 N.Y.S.2d 859 (County Ct. 1959).

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## 7A Am. Jur. 2d Automobiles § 316

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration

#### E. Parking or Standing

##### 2. Place and Manner of Parking or Standing

## § 316. Turning off motor and removing ignition key

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  12, 333, 334

### A.L.R. Library

[Liability for personal injury or property damage caused by unauthorized use of automobile which has been parked with keys removed from ignition, 70 A.L.R.4th 276](#)

[Liability of motorist who left key in ignition for damage or injury caused by stranger operating the vehicle, 45 A.L.R.3d 787](#)

[Failure of motorist to cramp wheels against curb or turn them away from traffic, or to shut off engine, as causing accidental starting up of parked motor vehicle, 42 A.L.R.3d 1283](#)

### Trial Strategy

[Liability of Motorist Who Left Keys in Vehicle for Injury Caused by Thief Operating Stolen Vehicle, 13 Am. Jur. Proof of Facts 3d 405](#) § 3

Motorists may be prohibited by statute from leaving a motor vehicle unattended without first stopping the engine, locking the ignition, and removing the key.<sup>1</sup> The clear purpose of a statute requiring motorists to stop the engine and remove the keys

before leaving a car unattended is to prevent theft or the unauthorized use of a motor vehicle.<sup>2</sup> Additionally, it is also a safety device, for to lock the ignition and remove the key results in preventing interference with the vehicle's stationary condition and mechanical immobility.<sup>3</sup> Such a statute is also designed to protect members of the public from damage caused by the operation of a motor vehicle by an unauthorized person.<sup>4</sup>

The leaving of keys in a vehicle's ignition, however, is not necessarily negligence,<sup>5</sup> and a person who has done so, even in a high-crime area, as a matter of law may not be liable to third persons injured in an accident involving the automobile, particularly if the accident occurs a substantial amount of time after the vehicle was stolen.<sup>6</sup>

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#### Footnotes

<sup>1</sup> [Ney v. Yellow Cab Co.](#), 2 Ill. 2d 74, 117 N.E.2d 74, 51 A.L.R.2d 624 (1954); [Justus v. Wood](#), 209 Tenn. 55, 348 S.W.2d 332 (1961).

<sup>2</sup> [Pile v. City of Brandenburg](#), 215 S.W.3d 36 (Ky. 2006), as corrected on denial of reh'g, (Mar. 22, 2007); [DeCastro v. Boylan](#), 367 So. 2d 83 (La. Ct. App. 4th Cir. 1979), writ denied, 369 So. 2d 458 (La. 1979).

<sup>3</sup> [Kass v. Schneiderman](#), 21 Misc. 2d 518, 197 N.Y.S.2d 979 (Mun. Ct. 1960).

<sup>4</sup> [Hergenrether v. East](#), 61 Cal. 2d 440, 39 Cal. Rptr. 4, 393 P.2d 164 (1964); [Ney v. Yellow Cab Co.](#), 2 Ill. 2d 74, 117 N.E.2d 74, 51 A.L.R.2d 624 (1954); [Padro v. Knobloch](#), 28 Misc. 2d 898, 214 N.Y.S.2d 216 (Sup 1961).

<sup>5</sup> [DeCastro v. Boylan](#), 367 So. 2d 83 (La. Ct. App. 4th Cir. 1979), writ denied, 369 So. 2d 458 (La. 1979).

<sup>6</sup> [Gmerek v. Rachlin](#), 390 So. 2d 1230 (Fla. 3d DCA 1980).

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## 7A Am. Jur. 2d Automobiles § 317

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### V. Traffic Regulations; Offenses Regarding Vehicles, Driving, Licensing, and Registration


#### E. Parking or Standing

#### 2. Place and Manner of Parking or Standing

## § 317. Parking or standing on traveled portion of highway

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  12, 333

Parking or standing of a vehicle on the paved or main-traveled portion of a highway outside of a business or residence district, when it is practicable to park it off that part of the highway, may be specifically prohibited by statute.<sup>1</sup> Such statutes require leaving a clear and unobstructed portion of the highway opposite the parked or standing vehicle for the free passage of other vehicles,<sup>2</sup> and under a statute prohibiting parking upon the paved part of any highway so as to interfere with traffic on such highway, parking so that traffic can travel in one direction only is parking so as to interfere with traffic as prohibited by the statute.<sup>3</sup> A law enforcement officer may have a reasonable suspicion such a parking regulation is violated, sufficient to temporarily detain the motorist, even though the motorist immediately moves the vehicle when the officer's vehicle pulls up behind the motorist.<sup>4</sup>

It is no excuse for the violation of such a statute that the driver was in the vehicle and at the wheel at the time it was left standing on the highway,<sup>5</sup> and such a statute is applicable to a bus stopping on the highway to receive or discharge passengers.<sup>6</sup> However, such a statute is not intended to apply to temporary stops made to ensure safety in turning from the highway onto a driveway,<sup>7</sup> and does not require a bus to leave the highway to take on a passenger where there are adverse snow and ice conditions.<sup>8</sup>

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### Footnotes

<sup>1</sup> [U.S. v. Hernandez](#), 55 F.3d 443 (9th Cir. 1995) (applying Montana law); [Capital Motor Lines v. Gillette](#), 235 Ala. 157, 177 So. 881 (1937).

<sup>2</sup> See [Pugh v. Akron-Chicago Transp. Co.](#), 64 Ohio App. 479, 18 Ohio Op. 211, 32 Ohio L. Abs. 159, 28 N.E.2d 1015

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(3d Dist. Allen County 1940), judgment aff'd, 137 Ohio St. 164, 17 Ohio Op. 511, 28 N.E.2d 501 (1940) ("free passage" means free passage of vehicles in the ordinary course of traffic on the improved portion of the highway).

3 Naylor v. Dragoon, 116 Vt. 552, 80 A.2d 600 (1951).

4 Texas Dept. of Public Safety v. Guajardo, 970 S.W.2d 602 (Tex. App. Houston 14th Dist. 1998).

5 Capital Motor Lines v. Gillette, 235 Ala. 157, 177 So. 881 (1937).

6 Hernandez v. Pensacola Coach Corp., 141 Fla. 441, 193 So. 555 (1940).

7 Alex v. Jozelich, 248 Minn. 27, 78 N.W.2d 440 (1956).

8 Webb v. Smith, 176 Va. 235, 10 S.E.2d 503, 131 A.L.R. 558 (1940).

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